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Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, prepared pursuant to Council resolutions 16/2 and 21/2. In the report, the Special Rapporteur focuses on gender equality in the realization of the human rights to water and sanitation.

Gender equality is a fundamental human rights principle, yet inequalities between men and women, and on the basis of gender identity, are observed in all countries and often translate into unequal opportunities and grave human rights violations. The Special Rapporteur explains that a transformative approach is a prerequisite for ultimately achieving gender equality in the enjoyment of the human rights to water and sanitation. This approach requires challenging social norms, stereotypes and intra-household patterns, while also promoting gender-responsive interventions that prioritize the implementation of women's specific needs. At the same time, the Special Rapporteur indicates that tackling the material and structural determinants of gender inequalities in access to water, sanitation and hygiene could serve as an entry point to address gender inequality more broadly.

The Special Rapporteur seeks to highlight areas that need particular attention in order to prevent and respond to gender inequalities in access to water and sanitation, as well as gender-based violence and barriers to the realization of the human rights to water and sanitation.

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I. Introduction

1. Inequalities based on gender exist in every country and in all aspects of social life, and are echoed in the vast divides between men and women in their ability to access, manage and benefit from water, sanitation and hygiene. A large and growing body of studies suggests that women and men often have differentiated access, use, experiences and knowledge of water, sanitation and hygiene. Cultural, social, economic and biological differences between women and men consistently lead to unequal opportunities for women in the enjoyment of the human rights to water and sanitation, with devastating consequences for the enjoyment of other human rights and gender equality more generally.

2. Many of the challenges to achieving gender equality in access to water, sanitation and hygiene are well documented: where water is not available in the home, women and girls are primarily responsible for water and hygiene at the household level and bear the greatest burden for collecting water. Other challenges related to inequality include access to sanitation, menstrual hygiene and toilets for lesbian, gay, bisexual, transgender, intersex and gender non-conforming people and an increased risk of gender-based violence.

3. Gender inequalities are pervasive at every stage of a women's life: from infancy, through to puberty, parenthood, illness and old age. In the present report, the Special Rapporteur on the human right to safe drinking water and sanitation seeks to underscore the importance of placing a strong focus on the needs of women and girls at all times, throughout their whole lifecycle, and of not overlooking the needs of women and girls with disabilities, living in poverty or suffering from other disadvantages. Gender inequality in access to water and sanitation facilities affect a wide range of other human rights, including women and girls' rights to health, to adequate housing, to education and to food.

4. Gender-based violence infringes the right to life, personal safety and freedom of movement. Gender non-conforming people often feel that they need to sign away their freedom of expression since segregation by gender — including in public toilets, detention centres, relief camps and school — poses a risk of exclusion, humiliation and violence.

5. Socioeconomic differences and sociocultural relationships, practices and stereotypes may exacerbate gendered differences and result in discrimination in terms of the enjoyment of rights. Since the root causes of those differences are complex and context-dependent, progress towards substantive equality in access to water and sanitation requires public action on different fronts. In tackling discrimination in the human rights to water and sanitation, structural inequalities that inhibit the enjoyment of other human rights must also be addressed. In the present report it is therefore suggested that concerted efforts in meeting women's material needs, such as access to affordable menstrual products, as well as their strategic needs, such as tackling harmful gender stereotypes and structural determinants of inequalities that affect access to water, sanitation and hygiene, may serve as entry points to address gender inequalities more broadly.

6. The Special Rapporteur outlines several key points that require attention in order to achieve substantive gender equality. Gender equality and non-discrimination must be integrated in laws and policies and positive measures must be imposed to proactively remedy injustices. Progress towards gender equality in practice requires the identification of root causes of inequalities and the dismantling of structural barriers, taboos, stereotypes and social norms that prevent the equal enjoyment of rights on the basis of gender. Policies and special measures need to be adopted to tackle gender inequalities in practice and strengthen women's voice and participation. To ensure policies are implemented and progress is made, strong accountability and monitoring frameworks must be put in place.

These will only be effective if women are systematically provided with opportunities for meaningful participation, decision-making and access to and control of resources.

II. Gender equality in laws and policies

7. Non-discrimination and equality are interlinked and are fundamental principles of international human rights law. Lack of access to adequate water, sanitation and hygiene and the inability to participate in their management have in many instances, on a structural basis, left many rights out of women and girls' reach. Laws serve to give individuals a legal claim, may create social expectations and may spur public action. Legal guarantees on gender equality and non-discrimination can help to build political legitimacy to back the enforcement of women's and girls' rights to access to water, sanitation and hygiene.

8. Gender equality refers to the equal rights, responsibilities and opportunities between genders taking into consideration the different interests, needs and priorities and recognizing the diversity of different groups of women and men.[1] Gender equality means that everyone must be able to enjoy the rights to water and sanitation equally. In order to attain substantive equality, therefore, it is necessary to address the specific gendered circumstances that act as barriers to the realization of those rights for women and girls in practice. States must assess existing legislation, policies and strategies, and find out to what extent the enjoyment of the rights to water and sanitation between men and women are equally guaranteed. On the basis of that review, remedies should be provided and gender-responsive strategies should be developed that guide policymaking and the corresponding allocation of budgets. Temporary affirmative measures will in many cases be necessary.

9. Many legal constituencies, however, have laws in place that hinder the equal enjoyment of the rights to water and sanitation. In many countries, land ownership, which is a precondition for gaining access to water, is often denied to women by family laws that also make it difficult for women to inherit land. Some countries criminalize open defecation while at the same time closing down public sanitation facilities.[2] Public urination and defecation is often criminalized and laws that aim to keep cities clean may discriminate against homeless persons who have no other option but to relieve themselves in the open. Among them are many women and girls in desperate need of an adequate facility that offers privacy. Some States allow individuals to use toilets in a manner consistent with that person's chosen gender identity while other States oblige persons to use only those toilets that correspond with the biological sex listed on their birth certificate.[3] Restrictive gender recognition laws not only severely undermine transgender peoples' ability to enjoy their rights to basic services, it also prevents them from living safely, free from violence and discrimination. Water and sanitation facilities must be safe, available, accessible, affordable, socially and culturally acceptable, provide privacy and ensure dignity for all individuals, including those who are transgender and gender non-conforming.

10. Under international human rights law, States have the obligation to identify and rectify all laws that have direct or indirect discriminatory consequences on the enjoyment of the human rights to water and sanitation. The legal framework should contain provisions on non-discrimination and equality in access to water and sanitation. Such laws should aim to

[1] Mayra Gomez and Inga Winkler, "Gender equality, water governance and food security with a focus on the Near East and North Africa", final draft (2015), p. 4. On file with the author.

[2] See A/HRC/27/55, paras. 19 and 22.

[3] See, for example, bill S. 1203, introduced to the Senate of South Carolina, United States of America, on 6 April 2016.

eliminate both formal and substantive discrimination, and take into account both public and private actors.

11. Laws, policies and strategies should not inadvertently reinforce gender stereotypes but should seek to transform them.[4] It is important that policies and strategies explicitly mention the different experiences of men and women and marginalized groups, otherwise documents that may seem gender-neutral will hide important differences between genders and will in practice benefit some persons more than others with regard to water and sanitation.

III. Intersectionality and multiple forms of discrimination

12. Although women — at every economic level, all over the world — may suffer disproportionate disadvantages and discrimination, they cannot be seen as a homogenous group. Different women are situated differently and face different challenges and barriers in relationship to water, sanitation and hygiene. Gender-based inequalities are exacerbated when they are coupled with other grounds for discrimination and disadvantages. Examples include when women and girls lack adequate access to water and sanitation and at the same time suffer from poverty, live with a disability, suffer from incontinence, live in remote areas, lack security of tenure, are imprisoned or are homeless. In these cases, they will be more likely to lack access to adequate facilities, to face exclusion or to experience vulnerability and additional health risks. The effects of social factors such as caste, age, marital status, profession, sexual orientation and gender identity are compounded when they intersect with other grounds for discrimination. In some States, women sanitation workers are particularly vulnerable, as they are exposed to an extremely dirty environment and contamination, which have a far greater impact during pregnancy and menstruation. Women belonging to certain minorities, including indigenous peoples and ethnic and religious groups, may face exclusion and disadvantages on multiple grounds. Those factors are not exhaustive and may change over time.

13. In humanitarian situations, including in times of conflict or natural disaster, when water and sanitation sources are at a minimum, the specific needs of women and girls are often not taken into account.[5] It is vital to better understand and share experiences about the kinds of responses that can be deployed across the diverse range of emergencies, including the most adequate and effective adaptations and interventions.[6] It further requires an integrated approach and ongoing coordination among all sectors concerned.[7] Lesbian, gay, bisexual, transgender, intersex and gender non-conforming people face additional challenges in areas affected by disaster. A recent United Nations assessment found that, in Europe, women and girls who are refugees are vulnerable to violence and lack services that specifically meet their needs, such as private bathing and sanitation facilities.[8] Some women have reported having stopped eating or drinking to avoid going to the toilet where

[4] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Gender stereotyping as a human rights violation" (October 2013).

[5] WaterAid Bangladesh, submission to the Special Rapporteur.

[6] Marni Sommer and others, "What is the scope for addressing menstrual hygiene management in complex humanitarian emergencies? A global review", *Waterlines* (to be published in 2016).

[7] Tajikistan, submission to the Special Rapporteur.

[8] European Parliament, "Reception of female refugees and asylum seekers in the EU: case study Germany" (2016), p. 13.

they felt unsafe." The reaction of Governments and others to these situations is considered inadequate and there is an emphasis on the urgent need to scale up such response efforts.[10]

14. In line with international human rights law, States should therefore use an "intersectionality lens" in all policy initiatives, to ensure that special attention is given to those persons most disadvantaged in the enjoyment of their rights.

IV. Adopting gender-responsive measures

15. Substantive equality demands policy responses that address women's material and strategic needs. Therefore, next to women's practical necessities (including, for example, for menstrual hygiene management), gender-responsive measures by the State and interventions by non-State actors should challenge customary relationships of unequal power and control, as well as stereotypes, between genders.[11] Owing to the disproportionate role that they play in domestic and caregiving responsibilities, for example, women are more affected by the absence of water, sanitation and hygiene. Meeting the material need for water, sanitation and hygiene may make it easier in many respects for women to perform the roles assigned to their gender, but it does not in and of itself lead to greater gender equality in relation to unpaid care work.

A. Redressing socioeconomic disadvantages

16. Worldwide, women perform unpaid jobs — mostly domestic and caregiving responsibilities — three times more than men do.[12] Therefore, as caregivers, women are also more affected when family members get ill as a result of inadequate water, sanitation and hygiene. Women's disproportionate share of unpaid work makes them financially dependent on others and leaves them less time for education and paid work. This again reinforces gender-assigned roles and women's financial dependence on men, including in terms of their ability to pay for water, sanitation and hygiene services. In addition, States do not value or reflect unpaid domestic and care work in economic indicators. Any governmental or civil society approach that seeks to address gender inequalities needs to question existing social norms and develop measures to encourage men to share responsibilities with women.

17. Social prejudices deny women equal opportunities in technical and managerial jobs in the water and sanitation sector and general norms work against girls and women in terms of enrolment in technical or engineering studies.[13] States can invest in reskilling and retraining women for these jobs, and stimulate increased access to higher education. Proactive recruitment efforts can reduce barriers that stop women from applying for jobs

[10] See https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/.

[10] Office of the United Nations High Commissioner for Refugees, United Nations Population Fund and Women's Refugee Commission, "Initial assessment report: protection risks for women and girls in the European refugee and migrant crisis — Greece and the former Yugoslav Republic of Macedonia" (2016), pp. 3-10.

[11] See A/HRC/22/50, para. 42.

[12] *Human Development Report 2015: Work for Human Development* (United Nations publication, Sales No. E.15.III.B.1), p. 12.

[13] Catherine Hill, Christianne Corbett and Andresse St. Rose, *Why So Few? Women in Science, Technology, Engineering and Mathematics* (Washington, D.C., American Association of University Women, 2010), p. xiv.

they would like to do, particularly in fields where women are either underrepresented or where wage gaps persist. The presence of women in more publicly visible positions, including in politics, management and decision-making, may influence stereotyping and deeply rooted gender-assigned roles.

B. Social norms and stereotyping

18. A gender stereotype is defined as "a generalized view or preconception about attributes or characteristics that are ought to be possessed by, or the roles that are or should be performed by, women and men".[14] A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their careers and make choices about their lives. Gender stereotyping is wrongful when it results in violations of human rights and fundamental freedoms. States cannot dismiss stereotyping and stigma as a social phenomenon over which States have no influence; instead, they must actively combat practices that are based on harmful stereotypes of men and women, including in the private sphere.[15]

19. Compounded gender stereotypes can have a disproportionately negative impact, in particular on the enjoyment of the human rights to water and sanitation, on certain groups of women, such as women with disabilities, women from minority or indigenous groups, women from lower caste groups and women of lower economic status. They may moreover become further compounded when they intersect with other forms of stigma or taboos, like those linked to menstruation and perimenopause, incontinence or childbirth-related complications, such as obstetric fistula. The power of stereotypes, stigmas, taboos and gender-assigned roles is such that persons sometimes do not claim their legal rights for fear or because of the pressure placed on them to conform to societal expectations. These deeply entrenched issues call for approaches that go beyond formal protection in the law.

20. Practices and beliefs are different in every culture, but generally menstruation is considered to be something unclean or impure and contact between men and women during menstruation is viewed as something that should be avoided.[16] Girls and women are sometimes not allowed to use the same toilets as men or are barred from certain locations.[17] Girls all over the world grow up with the idea that menstruation is something they should hide and not speak about — an embarrassing event associated with shame. This powerful stigma and taboo surrounding menstruation translates into fear of leaking or staining clothes. Worldwide, women and girls prefer to hide the fact that they are menstruating.[18] Data collected in Senegal shows that, owing to shame, menstrual material, once washed, is mainly dried in secluded, private and dark locations, such as tiled rooms or even under pillows, instead of in direct sunlight, which would reduce the risk of infection by ensuring that pathogens do not grow.[19]

21. In many cultures, girls are considered adults after their first menstruation and may drop out of school, marry and start having children. Increased knowledge of menstruation

[14] OHCHR, "Gender stereotyping as a human rights violation" (October 2013), p. 24.

[15] See A/HRC/21/42, para. 58, and article 5 of the Convention on the Elimination of All Forms of Discrimination against Women.

[16] See www.wateraid.org/~/media/Files/Global/MHM%20files/Module1_HR.pdf.

[17] Water Supply and Sanitation Collaborative Council and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Menstrual Hygiene Management, Behaviour and Practices in the Louga Region, Senegal* (2015), pp. 22-32.

[18] See europe.newsweek.com/womens-periods-menstruation-tampons-pads-449833?rm=eu.

[19] Water Supply and Sanitation Collaborative Council and UN-Women, *Menstrual Hygiene Management, Behaviour and Practices in the Louga Region, Senegal* (2015), pp. 32.

by both men and women, combined with strategies to lift social taboos on menstruation, may prevent girls from being considered as adults ready for marriage but, rather, as young adolescents going through a normal phase of their development.[20]

22. Poor menstruation management has far-reaching consequences for society as a whole and a lack of knowledge by both women and men reinforces the taboos on this topic. Education, awareness-raising and training sessions are important ways to address this problem. Moreover, it is not only girls and boys, but also teachers, government officials, community-based health workers and development staff, who must be informed on menstruation and its management. The Ministry of Drinking Water and Sanitation of India has issued menstrual hygiene management guidelines containing various approaches to creating an environment in which menstrual hygiene is considered acceptable and normal.[21] Education on menstruation should focus on girls before menarche to ensure girls are aware of what will happen to their bodies in time.

23. Bodily and hormonal changes, including menstruation, affect both boys and girls and their attitudes towards each other. Men and boys must be involved in education and empowerment initiatives, as they play a role in creating unequal power relations and harmful stereotypes. Caution must be taken to not confirm or worsen stereotypes and shame. Teachers in the Plurinational State of Bolivia have noted that simply introducing the topic of menstruation embarrassed girls and increased teasing from boys.[22] In India, the campaign "No toilet, no bride" proved to be successful in terms of men investing more in the construction of toilets, but some scholars have argued that it may have reinforced stereotypes and gender roles within marriage.[23] More evidence and evaluations are still needed on the effectiveness of initiatives for health and schooling, as is the development of country-level expertise.[24]

24. Sociocultural norms, notions of "female modesty" and masculinity and stereotypes concerning gender-assigned roles, including of women as caretakers, translate into unequal opportunities, unequal power and control over finances and resources, as well as unequal household responsibilities. Where legislation and policies reflect stigmatizing attitudes, thereby institutionalizing and formalizing stigma, they must be repealed. States may design and implement, in collaboration with civil society, awareness-raising programmes to enhance positive and non-stereotypical portrayals of women. Initiatives should aim to reveal "invisible" social norms and power relations through a context-specific gender analysis. WaterAid, for example, has undertaken qualitative research to explore how the provision of water, sanitation and hygiene services has led to positive changes in gender roles and social relations among men and women.[25]

25. The Committee on the Elimination of Discrimination against Women has recommended using innovative measures targeting the media to enhance positive and non-stereotypical portrayals of women.[26] Several attempts have been made to "break the silence" on menstruation through the use of various forms of social media. A recent *Newsweek* story highlighted the everyday struggle that women experience because of their

[20] Ibid., p. 44.

[21] India, Ministry of Drinking Water and Sanitation, *Menstrual Hygiene Management* (December 2015).

[22] Jeanne Long and others, *WASH in Schools Empowers Girls' Education in Rural Cochabamba, Bolivia: An Assessment of Menstrual Management in Schools* (New York, United Nations Children's Fund, 2012), p. 10.

[23] See https://sanitationupdates.wordpress.com/tag/no-toilet-no-bride-program/.

[24] Marni Sommer and others, "A time for global action: addressing girls' menstrual hygiene management needs in schools", 2016.

[25] WaterAid Australia, submission to the Special Rapporteur.

[26] See CEDAW/C/MNG/CO/8-9, para. 15 (a).

menstrual cycle by showing a photograph of a tampon on the cover.[27] A letter to the chief executive officer of Facebook from a student in New Delhi asking him to introduce a "on my period" button on the world's largest social network has received significant online attention.[28] Awareness-raising campaigns to inform and change the mindsets and attitudes of both men and women should be designed using all available means, including the media, at the community level and in schools, with the participation of civil society.

C. Gender-based violence and sanitation-related psychosocial stress

26. Gender-based violence can be defined as acts that "inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".[29] It is a widespread issue rooted in power differences and structural inequality between men and women, although men and boys can also suffer gender-based violence. As the Secretary-General has pointed out: "Violence against women and girls makes its hideous imprint on every continent, country and culture".[30]

27. Women fear violence by men in public toilets and open defecation sites, and along the routes leading to both. Some women and girls looking for a place to defecate have reportedly been exposed to rude remarks, brick-throwing, stabbing and rape. Gender-based violence also occurs at places to collect water, bathe and wash clothes. Abuse of boys is reportedly a common and underrecognized phenomenon, and one that receives even less attention, as shame and cultural restrictions or taboos concerning homosexuality deters boys from reporting such abuse.[31]

28. In addition to risking physical violence, women and girls may also experience sanitation-related psychosocial stress, including fear of sexual violence. Women and girls who have limited access to sanitation facilities experience environmental barriers when they engage in water, sanitation and hygiene practices, including carrying water, managing menstruation, defecating and bathing, that contribute to that kind of stress. Examples include the fear of encountering snakes and mosquitos when walking to a defecation site, or the stress caused by social norms that view the fact of being seen by men while bathing as negative, among other issues. A better understanding of the range of causes of stress and adaptive behaviours is needed to inform context-specific, gender-sensitive water and sanitation interventions.[32]

29. The fact that in many instances women and girls risk being harassed when they relieve themselves in the open or in public facilities is partly due to the structural and systematic use of stereotypes and stigma. The promotion of awareness-raising campaigns, targeted education programmes and discussion groups, among other measures, to transform both men's and women's perceptions of gender roles is therefore encouraged. Gender-based violence must be prevented and investigated, and those responsible must be prosecuted, in order to break patterns of societal acceptance of exclusion and violence

[27] See www.vivala.com/womens-issues/newsweek-cover-period-stigma/4062.

[28] See www.indiatimes.com/news/india/this-girl-s-open-letter-to-mark-zuckerberg-asking-for-an-on-my-period-button-deserves-a-reply-252396.html.

[29] Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women.

[30] See www.un.org/en/women/endviolence/pdf/pressmaterials/VAW%20Press%20Release.pdf.

[31] Louisa Gosling and others, "Nowhere to go: how a lack of safe toilets threatens to increase violence against women in slums" (WaterAid).

[32] Krushna Chandra Sahoo and others, "Sanitation-related psychosocial stress: a grounded theory study of women across the life-course in Odisha, India", *Social Science and Medicine*, vol. 139 (August 2015), pp. 80-89.

based on gender norms. Recognizing that young people may grow up to be change makers, curricula in all schools should challenge gender stereotypes and encourage critical thinking.

30. People who do not conform to a fixed idea of gender may experience violence and abuse when using gender-segregated sanitation facilities. Gender non-conforming people face harassment in or avoid gender-segregated public toilets altogether out of fear. For example, transgender girls who use the boys' toilets and transgender boys who use the girls' toilet in schools are highly vulnerable to bullying, harassment and assault by other students.[33] Research from India indicates that transgender persons face difficulties in finding rental housing and are often forced to live in remote slum areas, where access to water and sanitation facilities is poor.[34]

31. States must take all measures necessary to remove the barriers that deter people from using sanitation facilities. A concerted approach is needed against violence based on gender identity and initiatives must aim to increase respect and acceptance throughout society. A basic level of recognition of rights is needed. Too many States have laws that punish people on the basis of their sexual orientation and gender identity and expression. States should attach considerable importance to training and supporting teachers and administrators on non-violent learning environments. Malta, for example, has enacted guidelines[35] for schools to promote the learning of human diversity that is inclusive of trans, gender-variant and intersex students, promoting social awareness, acceptance and respect.[36]

D. Quality, health and safety issues

32. Levels of access to water and sanitation services affect men and women unequally. Because of their domestic roles and responsibilities, women are in greatest physical contact with contaminated water and human waste.[37] Women and girls who hold their urine for long periods of time have a higher risk of bladder and kidney infections. In addition, they tend to avoid consuming liquids to prevent having to use the toilet, as a result of which many become dehydrated.

33. Quality standards must take into account the fact that the amount of toxic substances to which a person can be safely exposed differs widely depending on the individual. Pregnant women in particular can be at higher risk of waterborne diseases from an intake of contaminated water. Standards on water, sanitation and hygiene quality must take into account the fact that women, especially when pregnant, have a lower tolerance for toxic substances.[38]

34. Soap and clean water for personal hygiene is of particular importance during menstruation. Women and girls must be able to use clean materials to absorb or collect menstrual fluid, and change them regularly and in privacy. They must have access to water and soap to wash their hands and body and facilities to dispose safely and hygienically of menstrual materials like pads, cups, cloths and tampons. Facilities must be easy to maintain

[33] Human Rights Watch, submission to the Special Rapporteur.

[34] Water Supply and Sanitation Collaborative Council and Freshwater Action Network South Asia, *Leave No One Behind: Voices of Women, Adolescent Girls, Elderly and Disabled People, and Sanitation Workers* (2016), p. 15.

[35] Neela Ghoshal and Kyle Knight, *Rights in Transition: Making Legal Recognition for Transgender People a Global Priority* (Human Rights Watch, 2016).

[36] Malta, Ministry for Education and Employment, *Trans, Gender-variant and Intersex Students in School Policy* (2015).

[37] UN-Water, "Gender, water and sanitation: a policy brief" (2006), p. 4.

[38] United States Human Rights Network and others, submission to the Special Rapporteur.

and to clean. Women and girls with disabilities face unique challenges in accessing sanitation facilities. Their ability to properly manage their hygiene may be particularly compromised and, when facilities do not provide for the space and materials they need, they are especially prone to diseases. Service providers must ensure that facilities are designed with the participation of women and girls in order to adapt them to their biological and sociocultural needs. The specific needs of women and girls must be incorporated into the design, implementation, monitoring and evaluation of sanitation facilities. Approaches must go beyond advocacy to address policies, infrastructure, maintenance systems and monitoring in order to ensure that services are adapted to the specific needs of users by, for example, taking into account their bodies, including their physical abilities, and their age. Formal independent regulators, as well as locally based participatory water and sanitation committees, should monitor whether regulations are well interpreted, implemented and effective.

35. Many women and girls risk their health using unhygienic sanitary methods, for example by using dirty rags or newspapers to collect menstrual fluids, as other methods are unaffordable, unavailable or unknown owing to stigma and taboos relating to menstruation. Although women in western countries use, on average, at least 12,000 tampons during their lifetime, there is no extensive and publicly available knowledge on the safety of tampon usage.[39] States are required to enact regulations on the safety of industrially produced menstrual products. Different women prefer different menstrual products, which include cloths and menstrual cups. Information must be provided so women can use the product they feel most comfortable with, with the knowledge and skills to manage their menses hygienically. States must further ensure affordable health care for all women and girls, including for menstrual issues and incontinence.

36. Water, sanitation and hygiene needs are critical to prevent high maternal and newborn mortality rates. In its recently adopted general comment No. 22 (2016) on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights notes that access to safe and potable water and adequate sanitation, as well as access to health-related education and information, are the underlying determinants to that right. Collaboration among sectors makes it possible to exchange information on how to deliver education on culturally taboo topics and to give greater priority to female-specific needs, in a manner that the water, sanitation and hygiene sector alone cannot achieve.[40]

E. Affordability

37. Affordability is of special concern to women and girls, who often have less access to financial resources than men. Women and girls need toilets for urination, defecation and menstrual hygiene management as well as for assisting younger children. Combined with women's lower access to financial resources, pay-per-use toilets with the same user fee for men and women are in practice often more expensive for women. Besides, public urinals are often free for men but not for women. To tackle this, the municipal government of Mumbai is currently constructing several toilet blocks the maintenance of which is financed through family passes instead of by charging a fee for each use. Some public toilets can be used free of charge by women and other groups that often lack access to economic resources, such as children and older people.

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[39] Susan Dudley and others, "Tampon safety", National Center for Health Research (2016). See also http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-013116+0+DOC+XML+V0//EN.

[40] WaterAid Australia, submission to the Special Rapporteur.

38. Water cut-offs may excessively affect women as family caretakers, in particular in poor female-headed households. Human rights law prescribes that a person's inability to pay for reasons beyond their control must never result in the disconnection of services. In Colombia, the Constitutional Court has stated that female-headed households may in some cases be subjected to special protection should they not be able to pay their water bills, and must be guaranteed special tariffs and a minimum amount of free water.[41]

39. Women and girls need to have materials to manage their menstruation, which can be a particular burden for those living in poverty. The human rights to water and sanitation include the right of all to affordable, safe and hygienic menstruation materials, which should be subsidized or provided free of charge when necessary.

40. According to international human rights law, States must allocate their maximum available resources to the progressive realization of human rights, paying particular attention to the rights and needs of the most marginalized segments of the population.[42] Progressive policies and plans will be rendered worthless, however, without a proper budget. A gender analysis supports Governments in making better budget-related choices by highlighting existing gender inequalities and the impact of public expenditures on women and girls. States should promote gender mainstreaming in budgeting activities for water sanitation and hygiene, and increase women's participation in budgeting processes. Specialized units throughout government can be tasked with oversight.[43]

41. While taxes are a key source of financing for such gender responsive initiatives, they can have detrimental effects on the poorest women. Governments must therefore carefully screen the effects of different tax mechanisms. For example, while value-added taxes may appear gender-neutral, they may disproportionately affect those living in poverty. Certainly, applying value-added tax to menstrual hygiene products disproportionately affects women and girls.

42. External assistance from non-governmental organizations, development agencies or the private sector should comply with human rights and may include measures to eliminate gender inequalities in access. States should include such needs into their official financial plans to ensure that they comply with the regulatory and policy framework developed to decrease gender inequalities.

F. Availability and accessibility

1. Household- and community-level access

43. Private facilities in or close to the home provide for privacy and safety, which is particularly relevant for women and girls, particularly the eldest, those living with disabilities and those who are pregnant or menstruating. Moreover, it is estimated that one in four women over the age of 35 experiences incontinence and that women disproportionately suffer from a lack of adequate and private facilities.[44] Having a water supply on the premises reduces the time spent on fetching water, cleaning the household and caring for family members. It eliminates the need for transportation and the risk of unsafe storage, reducing the risk of health problems such as musculoskeletal disorders and

[41] See www.corteconstitucional.gov.co/relatoria/2011/T-740-11.htm.

[42] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

[43] Nigeria, Federal Ministry of Water Resources, submission to the Special Rapporteur, p. 5.

[44] Benedicte Hafskjold and others, "Incompetent at incontinence: why are we ignoring the needs of incontinence sufferers?", *Waterlines*, vol. 35, No. 3 (to be published in July 2016).

water-related diseases. States must prioritize water and sanitation provision to households not yet served and, in particular, those households where women and girls have the least adequate alternatives.

44. Where it is not yet possible to have access to services on site, it is important to scale up the construction of safe and nearby community toilets. As mentioned above, there is a multitude of psychosocial stress factors that women face owing to unsafe, inadequate or absent sanitation facilities. To reduce the risk of women and girls experiencing violence, building codes for community water and sanitation facilities should include gender considerations such as sex-segregated cubicles, closeness to the house and lighted pathways to and at facilities. The location should also make it possible for a concierge to be present and monitor the surroundings.[45] It is important to note, however, that building safer latrines in or close to households does not eliminate the risk of gender-based violence, as the measure does not address the root causes of violence. As outlined by the Water Supply and Sanitation Collaborative Council, adequate sanitation without attention to gendered relations of power puts the burden of safety on women and does not address gender-based patterns of violence against women, which require a far more structural approach.[46] Building safer facilities may sometimes, however, take away a burden for women and girls to visit public toilets that provide for privacy and safety. In this context, WaterAid has developed a toolkit for practitioners.[47]

2. Extra-household access

45. Human rights law requires that sanitation facilities be reliably accessible to satisfy all needs throughout the day and the night, and meet the needs of their users. A lack of adequate facilities in public spaces often leads women and girls to avoid the public and both work and school life, particularly during menstruation, when they live with disabilities or suffer from incontinence.

46. Worldwide, there are more possibilities for men than for women to relieve themselves outside the house. Examples include the plenty free-to-use urinals for men in the capital of the Netherlands.[48] In India, public facilities for men outnumber those for women by up to 42 per cent.[49] The construction of public urinals to tackle open urination by men is relatively easy, as such urinals do not need to have doors and locks, have no seat to turn up, generally use less water and are therefore a relatively cheaper solution. States must set targets to scale up adequate public sanitation facilities for women and girls.

47. Human rights law requires that a sufficient number of sanitation facilities be available with associated services to ensure that waiting times are not unreasonably long. Many public facilities have an identical number of stalls for men and women, although in practice women and girls often have to wait in long lines to use the toilet, while men have much quicker access. The clothes women tend to wear and have to take off using the toilet require more time than for men, and women spend time assisting children using the toilet.

[45] Aqual ed and others and Germany, Federal Foreign Office, submissions to the Special Rapporteur.

[46] Water Supply and Sanitation Collaborative Council, "Sanitation vulnerabilities, women's stresses and struggles for violence-free sanitation", briefing note No. 2 (2015).

[47] See http://violence-wash.lboro.ac.uk/.

[48] See www.joostdevree.nl/bouwkunde2/jpgs/straatmeubilair_21_brochure_krullen_in_amsterdam_urinoirs_www_cornelissenamsterdam_nl.pdf.

[49] Miriam Hartmann and others, "Gender-responsive sanitation solutions in urban India", (RTI Press 2015).

Some States have adopted legislation in which equality requires a ratio of two women's cubicles for every cubicle provided for men.[50]

48. Standards in regulations and building codes should include special needs for women and girls, and must be developed for schools, hospitals, the workplace, market places, places of detention and public transport hubs and public institutions, among other places. Standards should consider general menstrual hygiene needs, but also who the users are likely to be. Standards must subsequently be implemented, put in practice and accordingly be enforced at all levels. Everyone should be able to use the toilet corresponding to the person's gender identity and States must pay attention to the special needs of more vulnerable persons, including those with disabilities and the elderly.

49. The sanitation and menstrual hygiene needs of homeless women and girls are almost universally unmet and the needs of that group are rarely reflected in water and sanitation policies. Human rights law demands that States place a particular focus on the needs of the most marginalized; hence, States should ensure that homeless women and girls have access to facilities.

50. States must also ensure that schools have the necessary infrastructure for girls and female teachers to manage their menstruation. Some Governments provide menstrual hygiene products for free to girls in public schools.[51] It is important that such products also be provided for free in informal schools, as the students in those schools are among the least able to afford them. Facilities must furthermore be acceptable to all users, and students should be able to freely use the toilet with which they feel most comfortable.

51. Pregnant women and women that have recently given birth and are still recovering from complications arising from labour are particularly vulnerable to the risk of infection related to a lack of safe water, sanitation and hygiene.[52] The Special Rapporteur's recent country visit to Tajikistan revealed the absence of a running water supply and adequate sanitation facilities in hospitals in the country.[53] In addition, the Special Rappporteur testified, during his visit to Botswana, that a clinic situated in an area facing serious drought was still going through a procurement process to buy a water tank.[54] In such critical places, where the most vulnerable persons are treated, measures must be upheld in contingency plans and implemented in advance. States must prioritize the provision to health centres of adequate water, hygiene and sanitation facilities, with the necessary budget allocations.

52. Adequate water and sanitation services, including menstrual hygiene facilities, must be accessible in the workplace, without hindrance, for all employees, in a manner that corresponds with their gender identity. The Special Rapporteur has noted that there is an urgent need to recognize and address the currently neglected lack of facilities that allow for adequate sanitation and menstrual hygiene management for women and girls in the workplace. Women and girls risk their health or miss out on workdays when such facilities are lacking. For example, 60 per cent of all women working in sub-Saharan Africa and South Asia work in the agriculture sector and their workplace often does not include facilities that would allow them to manage their sanitation and menstruation, or those

[50] See, for example, the "potty parity laws" in the United States mentioned in "Having to go: halting stations for women" (12 April 2012), available from http://womenshistorynetwork.org/blog/?p=1140.

[51] For example, the Kenya Environmental Sanitation and Hygiene Policy 2016-2030, pp. 39-40 http://reliefweb.int/sites/reliefweb.int/files/resources/Briefing%20Note%203.pdf (accessed 14-7-2016).

[52] A/HRC/33/49/Add.2.

[53] A/HRC/33/49/Add.3.

facilities are located far away from the place of work.[55] Regulations often do not apply to women working in the informal sector, and women working in public spaces such as markets often have no access to facilities altogether. In the manufacturing industry and in dense urban areas, women and girls sometimes work in overcrowded spaces where privacy is limited and sanitation facilities and spaces are inadequate to manage their menstruation.

53. Employment codes and standards that explicitly require the inclusion of facilities for menstrual hygiene management in the workplace are currently limited or do not exist. Such regulations must be developed, promoted and enforced and must serve to hold businesses and Governments to account. It is important that Governments determine these responsibilities within their administrative structures, so they can be held to account. In addition, private companies and employers have a responsibility to prioritize this issue and take action. Trade unions too have the potential to encourage good practices and support workers' rights in this area.

G. Participation and empowerment

54. Participation is not only a right in itself, but also imperative for fulfilling other rights. Participation encompasses women's power to influence decisions, to voice their needs, to make individual choices and to control their own lives. The lack of water, sanitation and hygiene facilities that meet women's and girls' needs can be largely attributed to the absence of women's participation in decision-making and planning.

55. Water, sanitation and hygiene policies and laws must proactively and deliberately enable the active, free and meaningful participation of women at all stages of planning, decision-making, monitoring and evaluation. As a principle, the participation of women must be fully integrated in both the legislative and the executive branches of government, and in initiatives by implementing entities, such as non-governmental organizations and service providers. Participation must take place at the micro, meso and macro levels. This includes community-level initiatives, as well as initiatives and decision-making at the national, regional and international levels.

56. At the national level, legal protections must be formulated to ensure the active participation of key stakeholders, including women and marginalized groups, in the formulation and implementation of policies. Governments must put in place mechanisms to involve women in the formulation of regulations and policies on water and sanitation and in decisions related to financing and budgeting, to influence the focus of monetary investments.

57. Although the pivotal role of women as providers and users of water, as well as the need to equip and empower women to participate at all levels in water resources programmes, has long been recognized, it is mostly men who manage and control the water services, resources, wastewater and solid waste industries at all levels.[56] The integration of women into these types of jobs can contribute to gender mainstreaming throughout the sector and to services being managed from the perspective of women. Women's participation in the sector can be encouraged by developing policies and strategies, including on education, with defined targets and timelines. As a good example, in the National Drinking Water Policy of Pakistan it is outlined that special efforts will be made to recruit and induct women in water supply-related institutions and other relevant agencies to

[55] Marni Sommer and others, "Managing menstruation in the workplace: an overlooked issue in low- and middle-income countries", *International Journal for Equity in Health*, vol. 15, No. 86 (2016).

[56] Finland, Italy, Lithuania, Nigeria, Tajikistan, State of Palestine, Aqual ed. and Public Services International, submissions to the Special Rapporteur.

ensure that the needs of women are adequately addressed in the design, operation and maintenance of water supply systems.[57] Aquafed and the Women for Water Partnership have reported that they are working together with companies and water associations to develop employment policies that aim to increase the representation of women in their staff and to remove prejudices against female employees.[58]

58. Women's and girls' voices are indispensable to ensuring that their needs are understood and prioritized, including on material and privacy requirements for menstrual hygiene management. In many cases, they are not consulted about the placement of water points and sanitation facilities, nor do they participate in designing the type of facility best suited to their needs or easiest for them to use, even though women and girls most often use these facilities and are primarily responsible for maintaining them. Including women and girls in making decisions about the design and location of facilities is even more relevant for those who have special needs because of a disability or their age or because they are pregnant, live in remote areas or are homeless, for example. Trans or gender non-conforming users of planned facilities must be given opportunities to participate. Some may find it useful to have access to a gender-neutral facility, while in other communities it may be acceptable for persons to simply use the toilet they feel most comfortable with.

59. Attempts to ensure women's participation through laws or regulations, however, may not correspond to local customary norms and their implementation subsequently fails. Customary norms reflect cultural gender hierarchies and power relations within a community and may have a much bigger influence in practice.[59] This means that even when women participate, their actual influence on the governance of water and sanitation may still be very limited. States and development initiatives must actively identify, acknowledge and remove barriers to meaningful participation. The right to information is inextricably related to participation, since women are often not aware that they can participate. Education on how to be part of a participatory process and how to voice needs is indispensable. The non-governmental organization Armenian Women for Health and Healthy Environment organizes seminars, workshops, training sessions and projects to develop women's leadership skills, for example.[60]

60. Women are sometimes unable to participate in meetings because of cultural norms against women speaking on their own behalf or cannot talk about sanitation and menstrual hygiene management needs because of taboos or social norms. For example, a recent study on Myanmar revealed that leadership and politics were strongly associated with masculinity, which is why women who do attend meetings rarely speak up.[61] A gender analysis lowers the risk of excluding women if special measures are taken accordingly, for example through specially targeted consultations such as women-only spaces. In carefully determining the location and meeting times and arranging transport, child care and translators, other barriers may be overcome. Any initiative that seeks to ensure the participation of women must also include a component of empowerment, including in economic terms, and address gender stereotypes.

[57] Pakistan, National Drinking Water Policy (September 2009). Available from http://epd.punjab.gov.pk/system/files/National_Drinking_Water_Policy.pdf.

[58] Aquafed and others, submission to the Special Rapporteur.

[59] Anne Hellum, Ingunn Ikdahl and Patricia Kameri-Mbote, "Turning the tide: engendering the human right to water", in *Water is Life: Women's Human Rights in National and Local Water Governance in Southern and Eastern Africa*, Anne Hellum and others, eds. (Harare, Weaver Press, 2015), p. 68.

[60] Women for Water Partnership and UN-Women, *Women as Agents of Change in Water: Reflections on Experiences from the Field* (Driebergen, De Hoop and Koonig, 2015), pp. 28-29.

[61] Jasmine Burnley and others, "A case for gender-responsive budgeting in Myanmar", Oxfam Briefing Papers (Oxfam, ActionAid, Care and Women's Organisations' Network, 2016), p. 6.

61. Marginalized women and girls (including those with disabilities, those who are elderly, uneducated or impoverished, and sex workers) face additional barriers to participation. It is therefore important to consider who participates, since participation is often extended only to certain women, in other words the wealthiest, more educated and those who are relatively privileged owing to their caste or religion.

62. Civil society groups can play a role in empowering women to claim their rights. It is moreover important for marginalized groups, including for example women and gender non-conforming people, to be able to unite, to express themselves, to be heard and to gain respect and recognition. Governments and donors should therefore invest in interest groups at all levels and support their effective participation at all stages of decision-making and planning, including in budgetary processes.

H. Accountability

63. Accountability refers to the relationship of duty bearers towards rights holders, as the latter are affected by the decisions and actions of the former. It demands that individuals and groups have access to courts and other mechanisms and that remedies be provided. Accountability mechanisms also determine which aspects of a gender-sensitive policy or service are functioning well or need to be adjusted. Monitoring is essential to track progress and assess whether the State is meeting its goals and targets.

1. Monitoring compliance and access to justice

64. States must monitor the extent to which they and third parties comply with the legal content of the human rights to water and sanitation and of human rights principles. States must monitor decision-making processes and policy implementation, including on national and local budgets, to track whether they serve to close existing gender-based inequalities. The effectiveness of review and monitoring requires the allocation of sufficient resources, transparency of government and State bodies that are independent of government interference. It requires that those in positions of authority have clearly defined duties and performance standards, enabling their actions to be assessed transparently and objectively.[62] Courts, national human rights institutions, non-governmental organizations, independent regulators and ombudspersons play an important role in identifying and addressing gender inequalities in the enjoyment of the rights to water and sanitation and must be supported by the State in doing so. Social movements play an important role in holding the State to account as they can press public officials into being more answerable and request reasoned justifications for actions and decisions. For example, thousands of women in slum areas in Nairobi affected by a lack of toilets and bathing facilities signed a petition asking the Ministry of Health to conduct a public inquiry in informal settlements, and succeeded.[63]

65. Persons must be made aware of the human rights to water and sanitation and the enforceability of those rights. Women must be able to hold the State to account regarding its obligations to provide adequate sanitation facilities in, for example, public spaces like market places and transport hubs. Impunity for perpetrators of gender-based violence must be eliminated and remedies must be provided. The Committee on the Elimination of Discrimination against Women has recommended that all cases of violence and

[62] OHCHR, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda* (New York and Geneva, 2013), p. 10.

[63] See https://toopressed2wait.wordpress.com/2014/08/21/city-slum-women-petition-government-on-sanitation/.

discrimination against women be brought under the jurisdiction of a criminal court rather than be settled through mediation.

66. The ability to claim rights in front of the courts is important for changing social and cultural attitudes. The courts play a role in condemning practices that reinforce gender stereotypes and can require the State or third parties to adopt measures to address them. Recently, a group of students asked the Supreme Court of India whether menstruation could be a criterion for denying women of a certain age the right to enter a temple and worship in it.[64] The Supreme Court addressed the following questions to the administration of the Sabarimala temple: "If men can go till a point (near the temple) without undertaking austere activities, why can't women go? … Are you associating menstruation with impurity? You are making a classification. Can a biological phenomenon be a reason for discrimination? All practices are acceptable till there is no distinction between genders."[65]

2. Monitoring progress on the equal enjoyment of the human rights to water and sanitation

67. Human rights-based monitoring can be built on a framework of structural, process and outcome indicators that serve to monitor not only the commitments made by a State but also the State's ongoing efforts and whether progress is being made to achieve targets on gender equality. Useful examples of indicators to monitor gender equality in access to water, sanitation and hygiene can be found in the OHCHR framework on indicators[66] and by the World Health Organization-United Nations Children's Fund Joint Monitoring Programme Task Force on monitoring inequalities. Indicators on menstrual hygiene facilities, for example, could be used to track gender equality and help to break related taboos.

68. It is of crucial importance to monitor, in a rights- and gender-sensitive manner, progress towards achieving the Sustainable Development Goals, and to make sure that national and local mechanisms track compliance with and progress made to realize the rights to water and sanitation, including in terms of gender equality. Gender equality is central to the Goals (see Goal 5) and is reflected in several targets, including target 6.2. Gender equality in access to water, sanitation and hygiene will have a positive impact on other goals and targets, including those on ending poverty (Goal 1), on promoting decent work and economic growth (Goal 8), on reducing inequality (Goal 10) and on making cities and human settlements inclusive and sustainable (Goal 11). Since gender inequalities are so profound in water and sanitation and, at the same time, manifest themselves in all human rights and throughout the entire development agenda, a comprehensive approach would allow for using similar indicators and information collected through the monitoring of different human rights and development targets.

69. Filling the existing data gap should be a priority in order to support gender-sensitive indicators. Systems need to be developed to improve the collection of data disaggregated by sex and other relevant factors, which are necessary to assess the impact and effectiveness of policies and programmes that aim to mainstream gender equality and enhance women's enjoyment of their human rights. Also, the collection process must take into account stereotypes and social and cultural factors that may induce gender bias in the data and be

[64] See www.thehindu.com/news/national/sabarimala-temple-entry-ban-can-menstruation-be-a-factor-asks-supreme-court/article8472787.ece.

[65] See www.firstpost.com/india/sabarimala-supreme-court-women-entry-trupti-desai-2748036.html.

[66] See www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf and A/HRC/27/55, annex.

more inclusive, transparent and grounded in legally binding international human rights commitments. OHCHR has developed a guidance note on data and disaggregation.[67]

70. The rapid development of technology has made it possible to leverage data from new sources. There is a great opportunity to connect official statistics to citizen-generated data. States must therefore support the crucial role played by civil society, women's organizations in particular. In addition to developing innovative ways of collecting data, civil society also brings qualitative value in analysing and interpreting results to make sure that gaps in monitoring are detected and that gender-specific needs are taken into account.

71. Under the framework of the Millennium Development Goals, data disaggregated by gender was not reported in a standardized fashion. There is not much data available on intra-household inequalities in terms of access to and use of sanitation and menstrual hygiene facilities or in terms of intersecting factors such as disability and age. The household cannot be considered as a homogeneous unit: its members have different roles, opinions and experiences. Finding ways to monitor intra-household inequalities may be pivotal in order to reveal gender inequalities and root causes of inequality that often remain invisible in household-level analyses. There might be a stark divide in terms of perspectives in household monitoring. A household member could respond differently to a household survey depending on whether that person is a man or a woman or has a disability.

72. In addition, it would be important to monitor how gender inequalities, including among lesbian, gay, bisexual, transgender, intersex and gender non-conforming persons, manifest themselves in extra-household settings, including in facilities in public institutions. This would reveal gender inequalities in the realm of many other human rights, since a lack of access to facilities outside the home severely impedes women and girls from attending school and participating in work, among other opportunities.

73. A project on gender-sensitive water monitoring, assessment and reporting that included several toolkits was initiated in the context of the World Water Assessment Programme.[68] The toolkits show the difficulties inherent in using quantitative methods to capture the nuances of gendered power relations and the socioeconomic processes that create or sustain gender inequalities in access to water and sanitation. They also underscore that some women may attend meetings because regulations on participation tell them to do so but that cultural norms may keep them from speaking up or being listened to. It may therefore be useful to integrate quantitative data with qualitative methods, for meaning and interpretation. On the basis of the findings of qualitative surveys, other quantitative indicators can be developed to fill the gap left by previous indicators. Counting the number of heads at meetings may then be accompanied with indicators that include the number of contributions made in meetings by women and men and the percentage of decisions on water and sanitation adopted on the basis of those contributions.

74. A recent study underscored that gender-differentiated patterns are not the same everywhere and reinforced the importance of context for understanding the gender dimensions of access and experience.[69] The quantity and quality of sex-disaggregated data at the micro level are considered to be better than those of data at the global level. It is therefore important that measuring progress in the rights to water and sanitation and gender equality is not based on global monitoring and on the use of quantitative data only. Context-specific studies and monitoring that capture the intersection of gender inequalities

[67] See www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

[68] See www.unesco.org/new/en/natural-sciences/environment/water/wwap/indicators.

[69] Leila Harris and others, "Intersections of gender and water: comparative approaches to everyday gendered negotiations of water access in underserved areas of Accra, Ghana, and Cape Town, South Africa", *Journal of Gender Studies* (2016), p. 13.

in the enjoyment of other human rights are key to understanding and developing improved policy responses.

V. Conclusions and recommendations

75. **Safe, adequate and affordable access to water, sanitation and hygiene, as well as the promotion of women's empowerment, can serve as an entry point to ensure that women and girls can enjoy their right to have and make choices, their right to have access to opportunities and resources, and their right to control their own lives, both inside and outside the home. Gender equality in respect of the human rights to water and sanitation will not only empower women individually but will also help women overcome poverty and empower their children, families and communities.**

76. **Likewise, structural gender inequalities have an inevitable impact on the enjoyment of the rights to water and sanitation. Any approach to overcoming gender inequalities in respect of the rights to water and sanitation must therefore address women's strategic needs, including the eradication of harmful gender stereotypes, alongside interventions that focus on the implementation of women's material needs, such as adequate menstrual hygiene facilities. Although such a transformative approach that challenges social norms, stereotypes and intra-household patterns may take time, it is required in order to ultimately achieve gender equality in the enjoyment of the rights to water and sanitation.**

77. **In line with the above, the Special Rapporteur recommends that States:**

(a) **Identify, repeal and reform all laws that have both direct and indirect discriminatory consequences with regard to the equal enjoyment of the human rights to water and sanitation, as well as with regard to gender-based violence;**

(b) **Go beyond enacting formal provisions and implement targeted policies and budgets, among other measures, in order to tackle structural gender inequalities for the enjoyment of the rights to water and sanitation;**

(c) **Make a legitimate effort to prevent and combat the root causes of gender inequalities, including the impacts of social norms, stereotypes, roles and taboos with regard to both women and men, through public campaigns, education and the media, among other measures;**

(d) **Create an enabling environment for women and girls to safely use water and sanitation facilities. Discrimination and violence based on gender identity must be prevented, investigated and remedied, and those responsible must be prosecuted;**

(e) **Promote gender equality, through intersectional policies, considering that gender-based inequalities related to water and sanitation are exacerbated when they are coupled with other grounds of discrimination and disadvantages;**

(f) **Increase collaboration between entities operating in the water, sanitation and hygiene sector and those operating in other sectors, including the health sector, to address gender inequalities and culturally taboo topics more effectively and in a comprehensive manner;**

(g) **Apply a gender analysis and increase women's participation in the formulation of government budgets to water, sanitation and hygiene;**

(h) **Ensure that regulations require that the specific needs of women and girls are incorporated into the design, implementation, monitoring and evaluation of water and sanitation facilities, taking into consideration the special needs of women**

and girls made more vulnerable by disability and age. Regulators should monitor whether such regulations are well interpreted, implemented and effective;

(i) Ensure the gender-responsive water, sanitation and hygiene facilities are available in schools, hospitals, the workplace, market places, places of detention and public spaces like public transport hubs and public institutions, among other places. Laws and regulations must be developed, promoted and enforced and must serve to hold Governments and non-State actors to account;

(j) Develop water, sanitation and hygiene approaches, programmes and policies that proactively and deliberately enable the meaningful participation of women at all stages of planning, decision-making, implementation, monitoring and evaluation. States and development partners must identify, acknowledge and remove barriers to participation in decision-making in respect of water, sanitation and hygiene initiatives and ensure that women are aware of their ability to participate;

(k) Develop a gender indicator system to improve the collection of data disaggregated by sex and other relevant factors, which are necessary to assess the impact and effectiveness of policies aimed at mainstreaming gender equality and enhancing women's enjoyment of their human rights to water and sanitation;

(l) Monitor intra-household inequalities and the way in which inequalities based on gender become manifest in extra-household settings, including in facilities in public institutions;

(m) Ensure that comprehensive data is collected on access to water, sanitation and hygiene management in respect of women and girls belonging to marginalized groups and living in marginalized areas, and support civil society in collecting data and in analysing, interpreting and monitoring results;

(n) Complement quantitative data on water, sanitation and hygiene with qualitative methods, to improve understanding and interpretation of gender-related issues and to inform and validate survey methods and techniques.

78. In addition, the Special Rapporteur recommends that development cooperation entities ensure that external assistance from non-governmental organizations, development agencies and the private sector comply with human rights standards and include measures to eliminate gender inequalities in access.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report by the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, submitted in compliance with resolution 24/18 of the Human Rights Council, on his visit to El Salvador from 11 to 18 May 2016.

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* Circulated in the language of submission and English only.

I. Introduction

1. The Special Rapporteur on the human right to safe drinking water and sanitation, Mr. Léo Heller, carried out a visit from 11 to 18 May 2016 to El Salvador, at the invitation of the Government, with the aim of assessing the progress made and the challenges faced in realizing the human rights to safe drinking water and sanitation.

2. During the eight-day mission, the Special Rapporteur had the opportunity to meet with the Ministers of Foreign Affairs, of the Environment and Natural Resources and of Health. He also met with the Attorney General of the Nation, the President of the Supreme Court of Justice and the Procurator for the Defence of Human Rights; as well as the President of the National Water Mains and Sewers Administration (ANDA), the Secretary for Issues of Vulnerability of the Ministry of Territorial Governance and Development, the President of the Social Investment Fund for Local Development, representatives of the legislative branch, United Nations agencies and representatives of the international agencies. He took part in a meeting of the National Council on Environmental Stability and Vulnerability and also spoke with representatives of the indigenous peoples, civil society organizations and the private sector.

3. The Special Rapporteur visited the city of San Salvador, as well as a teaching centre and rural and urban communities in the municipalities of Ilopango and Nejapa and the La Esperanza Penal Centre in the municipality of Ayutuxtepeque, all of which are located in the department of San Salvador. During those visits he spoke with human rights defenders, and community leaders facing problems of access to water, persons deprived of their liberty and, more generally, with women and children in rural and urban areas responsible for finding water for their families.

4. The Special Rapporteur wishes to thank the Government of El Salvador for its openness prior to and during the mission, for granting his request for access to a number of locations and for providing all the necessary documentation. He would also like to thank all of those persons whom he had the opportunity to meet for their time and openness and the United Nations Country Team for its support in organizing the visit.

5. Over the past few decades, El Salvador has made impressive progress in the water and sanitation sector. According to United Nations Millennium Development Goals monitoring, El Salvador reached and indeed, far surpassed, its water and sanitation goals in 2015, with almost 94 per cent of the population obtaining improved access to water. Likewise, in 2015, 75 per cent of the population gained improved access to sanitation services. During the period 1990-2015, access to water through household connections rose significantly, by 35 per cent at the national level, with 78 per cent of the total population benefiting from coverage in 2015.[1] The Special Rapporteur recognizes the efforts of the Government that made such progress possible, in particular over the past few years.

6. However, it should be pointed out that, as a part of monitoring under the Millennium Development Goals mechanism, the concept of access to water and sanitation employed includes certain types of solutions that do not always meet the standard set by the definition of the human right to water and sanitation used by the Special Rapporteur in his assessment of the situation in El Salvador.

[1] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), *Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment*, available at http://www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015_English.pdf.

7. According to the regional study published by the Office for the Coordination of Humanitarian Affairs, Central America is undergoing the worst drought in decades. As of January 2016, it is estimated that, in El Salvador, 825,000 persons (approximately 20 per cent of the population) were living in a situation of food insecurity on account of the drought.[2] In mid-2015, the International Federation of Red Cross and Red Crescent Societies identified the rural population of the eastern region known as the "Dry Corridor", located in the departments of La Unión, San Miguel, Morazán and Usulután,[3] as being most at risk.

8. Despite the availability of this study and of a clear definition of the populations at risk since mid-2015, it was not until 13 April 2016 that the Government of El Salvador declared a state of emergency on account of the water shortage in the country. Significantly, the declaration of a state of emergency, in the form of an orange alert, covered only the San Salvador Metropolitan Area, excluding those populations previously identified as being at high risk. The number of water-shortage protests on the outskirts of the San Salvador Metropolitan Area increased in the weeks leading up to the declaration of the state of emergency.

9. According to the Ministry of the Environment and Natural Resources, the ever-worsening effects of climate change have been clearly visible for the past few years. In 2013, the Ministry launched a national climate change strategy to tackle those challenges.[4]

10. In situations of crisis relating to access to water, such as that brought on by the current drought in El Salvador, the weaknesses of the system become more apparent and inequality between different groups of persons with regard to access, more acute. In general, those most affected are women and girls, who are responsible for ensuring that their families have access to water. In addition, the following categories of persons are generally particularly badly affected: persons deprived of their liberty, rural populations, persons living in situations of poverty or in street situations, persons with disabilities and older persons. It has also become clear that the crisis has had a major impact on persons living in gang areas, which are sometimes out of bounds to suppliers attempting to make emergency water deliveries.

11. Although they have given rise to a dramatic situation, the intense drought and its visible effects should be viewed by the Government and other key actors in the country as a learning opportunity. All of this highlights the need to place the human rights to water and sanitation at the centre of national climate change plans and policies. Such an approach would enable the Government to consolidate the progress made to date and to ensure that persons living in situations of vulnerability do not bear the brunt of the crisis.

12. In order to meet the short- and long-term human rights obligations of El Salvador, it is important to highlight that work gradually to realize the human rights to water and to sanitation would, in turn, help El Salvador to achieve the Sustainable Development Goals and in particular, but not exclusively, Goal 6 on ensuring universal access to water and

[2] Office for the Coordination of Humanitarian Affairs, Humanitarian Country Team, "Drought in Central America in 2015: Situation Report (as of October 6, 2015)", January 2016, p. 2, available at www.redhum.org/uploads/documentos/pdf/Sitrep_OCHA-ROLAC_Drought_in_CA_EN_061015-20151006-AL-17144.pdf.

[3] International Federation of Red Cross and Red Crescent Societies, "Emergency Plan of Action (EPoA) El Salvador Drought", August 2015, available at http://reliefweb.int/sites/reliefweb.int/files/resources/MDRSV009do.pdf.

[4] www.marn.gob.sv/estrategia-nacional-de-cambio-climatico/.

sanitation by 2030, which is clearly linked to the principles of the human rights to water and sanitation.[5]

II. Legal and institutional frameworks and accountability

A. Legal framework

13. El Salvador has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These international human rights instruments include legal obligations relating to the human right to life and the human rights to water and sanitation.[6] El Salvador has also ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which enables individuals to submit cases of alleged violations of their human rights to the Committee on Economic, Social and Cultural Rights, after having exhausted all available domestic remedies.

14. In 2010, the human right to water and sanitation was explicitly recognized by the General Assembly in its resolution 64/292, which was supported by El Salvador, and by the Human Rights Council in its resolution 15/9, which was adopted without a vote. The Special Rapporteur commends El Salvador for having supported both resolutions.

15. Within the inter-American system, El Salvador is a party to the American Convention on Human Rights (Pact of San José, Costa Rica) and to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Although neither of these treaties makes explicit mention of the human rights to water and sanitation, both rights are essential prerequisites for effective enjoyment of various other human rights, such as the right to life, the right to a decent standard of living, the right to health, the right to education, the right to proper housing and the right to food.[7]

16. In accordance with these international frameworks, the State is required to take concrete steps gradually to realize the human rights to water and sanitation, making maximum use of the resources available. More specifically, the human right to water grants to all people, without any form of discrimination, the right of access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The human right to sanitation grants to all people the right to physically accessible and affordable sanitation services that are safe, hygienic and acceptable and which offer privacy and dignity.

17. Fulfilment of these rights also includes the need to provide access to proper and affordable hygiene practices, such as hand washing and management of menstrual hygiene. The Government is obliged immediately to guarantee access to water and sanitation facilities and services without discrimination, in particular for vulnerable or marginalized groups.

18. The international commitments made by El Salvador in respect of the rights to water and sanitation have not yet been incorporated into its domestic legislation.

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[5] Available at http://los17ods.org/los-17-objetivos-para-2030/agua/.

[6] Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and article 24 of the Convention on the Rights of the Child.

[7] https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm and http://www.oas.org/juridico/english/treaties/a-52.html.

19. First of all, the Constitution of El Salvador makes no provision for the rights to water and sanitation. In April 2012 the legislative assembly initially approved reform of article 69 of the Constitution, but the amendment has not yet been ratified. In the same connection, on 8 April 2015, the Office of the Human Rights Advocate issued a resolution establishing the responsibility of the 2012 to 2015 plenary legislative assembly for failing in its duty to adopt legislative measures to give effect to and properly to guarantee the exercise of, and to adapt domestic legislation to the requirements deriving from international law and for failing to comply with the repeated calls from the Office in that respect.[8]

20. Accordingly, the Special Rapporteur urges the legislative assembly to ratify the amendment to article 69 of the Constitution and explicitly to incorporate into the final text the expression "human rights to water and sanitation", which are absent from the proposal currently under consideration. The explicit inclusion of these rights into the Constitution will help ensure their effective recognition and implementation, thereby guaranteeing those rights in national legislation and judicial decisions. At all events, it is essential to point out that on 15 December 2014, the Constitutional Chamber of the Supreme Court recognized the right to water in its case law, and interpreted it as one of the fundamental rights recognized by the Constitution.[9]

21. Since 2012, a general law on water resources has been under discussion before the legislative assembly. The main differences between the proposals put forward for discussion concern the composition of the governing body and the clear references made in the law to the principle that priority should be given to the use of water for human consumption over other uses.

22. The Special Rapporteur believes it to be essential for all parties involved in these negotiations to realize that society as a whole will benefit from a model that ensures water resources are managed efficiently, on an equal basis and democratically. In addition, it is of overriding importance that the law should place at the heart of any policy the human rights to water and sanitation and that it should make it clear that the use of water for human consumption must have priority. Accordingly, the Special Rapporteur calls on the members of the legislative assembly to achieve a consensus on the adoption of a law that assigns priority to the interests of citizens and guarantees the normative substance and principles of the human rights to water and sanitation.

23. It is equally essential for the body responsible for the water policy introduced by the law to be transparent and participatory, and for the State to play a leading role. Stewardship should reflect the positive initiatives recently taken by the State, such as the establishment of the National Council on Environmental Sustainability and Vulnerability, involving broad participation by the leading actors in the sector and giving priority to the participation of civil society and representatives of those groups most deprived in terms of access to water.

24. Finally, it will be essential to adopt a framework law for the water resources and sanitation subsector defined by the law, which will focus on the fulfilment of human rights and provide guidance for the sector's institutions and guarantee proper regulation of those services.

[8] Office of the Human Rights Advocate (2015), resolution of 8 April 2015, Exp. SS-0060-2015, available at www.pddh.gob.sv.

[9] Constitutional Chamber of the Supreme Court, *amparo* proceedings 513-2012, final decision, 15 December 2014.

B. Institutional framework

25. El Salvador lacks an institutional framework to ensure coordinated and proper management of water resources. This function is performed by more than twenty different bodies which share responsibility for distributing and supervising water resources in El Salvador; they include, inter alia, municipal authorities, rural water management boards and housing development agencies. For example, the National Water Mains and Sewers Administration is the governing body and main service provider in urban areas. For its part, the Ministry of Health is responsible for monitoring the quality of drinking water, while the Ministry of the Environment and Natural Resources is responsible for the management of water resources. In turn, the Ministry of Economics approves changes to water rates.

26. The National Water Mains and Sewers Administration provides services to approximately 64 per cent of the country's population and to some 90 per cent of the urban population, with a total of approximately 800,000 (domestic) users in 156 of the 262 towns in El Salvador.[10] Furthermore, according to same Administration, El Salvador has 2,323 rural water networks that are not interconnected, not linked to the National Water Mains and Sewers Administration and managed by community associations: rural water management boards (73 per cent), water committees (16 per cent) and municipal authorities (11 per cent).[11]

27. The rural water boards are autonomous agencies that serve the populations of low-income rural communities and are organized so as to provide communal water supply networks. They do not manage sanitation services. These systems are non-profit making, but collect fees to cover operating and maintenance costs. In principle, the rural water management boards receive no assistance from the State, as they do not fall within the existing normative categories and they are obliged to pay for drawing water at prices equivalent to those paid by the national company. The absence of State support hampers the supply of clean drinking water in rural areas.

28. On 2 May 2016, the Government of El Salvador, acting through the National Water Mains and Sewers Administration, proposed to the legislative assembly that activities, works and projects carried out by community bodies for the purpose of providing drinking water on a non-profit basis be declared of public utility and in the interest of society.

29. Urgent measures need to be adopted in respect of the institutional organization of the water and sanitation sector in El Salvador so as to rationalize the way in which it provides services to the different types of community in the country. The national plan for water and sanitation, development of which began under the coordination of the National Water Mains and Sewers Administration, could well provide a useful framework for achieving a more rational institutional set-up. Accordingly, the Special Rapporteur recommends that this plan should be developed through a highly participatory process that includes other service providers, such as the rural water boards and representatives of civil society. The Special Rapporteur also urges those responsible for its development to set the normative substance of human rights at the core of all their assessments, proposals and recommendations.

30. The Special Rapporteur calls for the establishment of an institutional structure to manage water and sanitation and of an independent regulatory body competent to ensure

[10] National Water Mains and Sewers Administration, *Actualización de Subsidios* (Update on subsidies), January 2016.

[11] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

that those who supply water comply with human rights. Such an agency will need to ensure that the public takes part in decision-making by providing sufficient and suitable information and by ensuring due accountability; it will also need to ensure that water and sanitation are affordable for all.

31. Lastly, the Special Rapporteur draws attention to the obligation of the Government, even when water supply and sanitation are delegated to third parties — such as the rural water boards or private, public or joint enterprises — to supervise and monitor them so as to ensure they guarantee all aspects of human rights.

C. Access to information and accountability

32. In El Salvador decisions on water rationing measures are not systematically publicized and there seems to be no standard rule for informing users. Only in respect of the orange warning announced in April 2016 was more detailed information on the measures provided by the national media.

33. Several people told the Special Rapporteur they were dissatisfied with the lack of proper notice of water rationing measures introduced by the institutions. Several people described the difficulty of planning and preparing for water rationing if they were given no prior notice or only informed late. During the visit, individual efforts to cope with the problems caused by water rationing, especially by women and girls who were compelled to fetch water from distribution points, were observed.

34. Regarding the lack of proper and timely information, the Special Rapporteur also learned that the results of quality tests of water for human consumption are neither made public nor sent to users.

35. In El Salvador there is no independent regulatory mechanism to monitor the performance of either the National Water Mains and Sewers Administration or the local authorities and agencies providing water and sanitation services.

36. However, the mandate of the Office of the Human Rights Advocate, which is part of the Public Legal Service, includes ensuring respect for and guaranteeing human rights, investigating, of its own motion or in response to a complaint, cases involving violations of human rights, helping the alleged victims of human rights violations and supervising the response of the public administration to those persons. The Office of the Human Rights Advocate is therefore a place to which people may take their concerns about human rights. This is the key to holding the authorities responsible for the rights to water and sanitation.

37. As regards the international sphere, the Special Rapporteur commends the Government for its ratification of both the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and encourages it to promote the use of that mechanism by the alleged victims of human rights violations.

III. The human rights to water and sanitation

A. Accessibility

38. Water and sanitation services must be accessible to all persons in dwellings, health and educational establishments and other public institutions and spaces, including workplaces.

39. In recent decades, there has been a significant improvement in the accessibility of water supply and sanitation services in El Salvador. In 2015, an international survey ranked

El Salvador first out of 117 countries, as the country which had made most progress in the world in increasing access to water and sanitation and in reducing inequality of access to them.[12] This index compares the rates at which countries with similar levels of coverage in terms of water supply and sanitation improve equality of access to water and sanitation.

1. Access to water

40. In spite of the progress described, according to the information provided by the National Water Mains and Sewers Administration, in 2016 more than 600,000 people in El Salvador are without any drinking water or sanitation service. In addition, more than 1 million people have access to only an inadequate water supply, with no guarantee as to quantity or drinking quality.[13]

41. As regards people with household connections, in 2015 there was also a wide gap between rural and urban areas: less than 60 per cent of houses were connected to the water network in rural areas, in comparison with 85 per cent in towns. People with no household connection draw water from artesian wells, rivers and lakes or collect rainwater.

42. In terms of physical access, in 2013 households with no household connection, who had to fetch water for domestic use, spent on average 39 minutes each day fetching water. If we assume that they fetched water 5.6 days each week, this means the task took from 3 to 4 hours each week.[14]

2. Access to sanitation

43. Between 1990 and 2015, the proportion of persons in El Salvador with access to improved sanitation services increased significantly, from 51 to 75 per cent. This progress is particularly marked in urban areas, where in 2015, 82 per cent of people had access to improved sanitation, in comparison with only 60 per cent in rural areas. Once again it is important to point out that these figures concern improved access to sanitation, which does not necessarily meet the requirements of the human right to sanitation. Moreover, 7 per cent of El Salvador's rural population resort to open defecation.

44. According to the 2014 National Health Survey, 37.4 per cent of households with household sanitation have a toilet connected to the sewerage system, while the remainder have individual solutions.[15]

45. The statistics indicate that part of the population classified as having access to sanitation services may not have proper access. Sometimes latrines that are unsafe or that do not ensure privacy are used. In addition, from the environmental and sanitary angle, disposal of the excreta collected from latrines may not be safely managed for users.

[12] Ryan Cronk et al., "The WASH Performance Index Report", available at http://waterinstitute.unc.edu/wash-performance-index-report/.

[13] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*. (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

[14] Department for Transparency, Access to Information and Civic Participation, Ministry of Economics (see resolution RAIP No. 0265/2015, of 17 September 2015).

[15] Ministry of Health/National Institute of Health and United Nations Children's Fund (2015), *Encuesta Nacional de Salud 2014 — Encuesta de Indicadores Múltiples por Conglomerados 2014. Resultados Principales* (Multiple indicator conglomerate survey 2014, main findings).

3. The situation in educational establishments

46. According to data from the Ministry of Education, in 2014 more than 1,100 schools in El Salvador had no piped drinking water. In other words, more than 10 per cent of educational establishments were without piped drinking water and were presumably obliged to draw water from alternative sources, such as rivers, or to collect rainwater. In the area covered by the National Water Mains and Sewers Administration, the Ministry of Education covers the cost, but the problem is more acute in rural schools, where there is no clear public policy on how to ensure pupils have access to water or on how to guarantee access to sanitation.

47. The Special Rapporteur visited a rural educational establishment where the State does not provide a water supply. The centre's director told him that he was personally responsible for ensuring that the pupils had access to water. During periods without rain, he had sometimes been obliged to purchase water at a price that was as high as 75 dollars per 10,000 litre tank. This creates inequality in comparison with educational establishments in urban areas, since it shifts the burden of providing access to drinking water and sanitation onto the directors of the centres.

B. Availability

48. The main sources of drinking water in El Salvador are groundwater and surface water, such as the river Lempa, which supplies a large part of the San Salvador metropolitan area. Some 70 per cent of the water extracted in the country is drawn from surface water sources, and 30 per cent from groundwater.[16]

49. The World Bank has estimated that El Salvador possesses an annual volume of 2,559 cubic metres of renewable internal freshwater per capita.[17] Ninety five per cent of precipitation falls from May to October and there are frequent and severe droughts during the driest months.

50. Management of water sources in El Salvador has had to deal with the pollution of a considerable proportion of the country's surface waters, essentially caused by untreated urban wastewaters and runoff from agriculture and industry. The river Acelguate, which drains the metropolitan areas of the capital, is severely polluted, making it impossible to use its water after standard treatment procedures.

51. Problems of quantity and quality of surface water may worsen if no agreements are reached between the countries of the region. In the case of the river Lempa, which is of strategic importance to El Salvador, proper management presupposes cooperation with Guatemala and Honduras. Accordingly, the Special Rapporteur urges all three countries to build a constructive relationship, via bilateral or trilateral treaties, to achieve satisfactory management of the transboundary river basins, with the human rights to water and sanitation at their core.

52. A further factor affecting the availability of water is the high wastage of the country's water supply networks. According to the National Water Mains and Sewers Administration, in 2014, in the country as a whole, 47.7 per cent of water was not billed for (on account of leaks and illegal connections).[18] This nationwide level of leakage, which

[16] Food and Agriculture Organization of the United Nations, 2005, available at www.fao.org/nr/water/aquastat/countries_regions/Profile_segments/SLV-WU_esp.stm.

[17] http://data.worldbank.org/indicator/ER.H2O.INTR.PC.

[18] National Water Mains and Sewers Administration, *Memoria de Labores* (Memorandum of activities) 2013, pp. 24, 30 and 35.

may be higher in the metropolitan area of San Salvador, must be drastically reduced if it is not to affect the availability of water.

Irregular access to water

53. In rural areas of El Salvador only 41 per cent of water supply systems, apart from those covered by the National Water Mains and Sewers Administration, provide service for more than 12 hours each day, and more than 21 per cent of the systems operate less than four days per week or less than two hours per day.[19]

54. In addition, in the San Salvador metropolitan the practice of applying water rationing measures in the areas supplied by the National Water Mains and Sewers Administration is apparently widespread. The practice has allegedly increased during the drought months, and in particular since April 2016, although rationing also appears to have been recurrent outside the current crisis period. The Special Rapporteur received information about intermittent water supply, with some regions having access for only a few hours at night, a few hours a week or even each month.

55. The people interviewed during the mission said that they have to come up with individual solutions to the problems caused by the water supply being cut off. Those with the means to do so are able to invest in large volume storage facilities which give them better access to water than people without the means. The Special Rapporteur also heard that some people store water in uncovered plastic tanks and buckets, posing a threat to water quality.

56. Improper water storage may have undesirable consequences, as with the spread in the transmission of arbovirus infections such as dengue, Chikungunya and Zika. The World Health Organization has declared the transmission of the Zika virus to be a public health emergency of international importance and El Salvador is one of the 24 countries in the Americas to be affected by the current epidemic.

57. Experience has shown water rationing by means of intermittent supply to be a false economy, as it inevitably leads to increased wastage and affects quality. The significant initiatives adopted by the Government to extend water security need to be reinforced so as to ensure continuous supply 24 hours a day, 7 days a week.

C. Quality

58. In El Salvador, the normative framework on requirements for water quality for human consumption sets out the respective roles of the service providers and of the Ministry of Health for monitoring and supervising water quality. According to the National Water Mains and Sewers Administration and the Ministry of Health, samples from the water monitoring carried out by them show water in El Salvador to be safe for human consumption.

59. During 2014, the National Water Mains and Sewers Administration conducted 10,142 microbiological tests and 3,537 physical and chemical tests nationwide. In addition, the Ministry of Health carries out complementary analyses of water quality, on the basis of bacteriological, physical and chemical parameters, including levels of heavy metal concentration. According to the results for 2015, out of 8,410 analyses, 515 samples (i.e. 6.12 per cent of the results) failed to meet the biological standards (total faecal coliform

[19] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2015.

bacteria or Escherichia coli). As regards physical and chemical parameters, out of 727 samples, 55.6 per cent were outside the norm, especially on account of a lack of residual chlorine. These findings give cause for concern about the need for rigorous evaluations and for measures to rectify the discrepancies detected.

60. The lack of effective information exchange between the two institutions should also be mentioned. The National Water Mains and Sewers Administration and other service providers should systematically inform the Ministry of Health of the results of its water quality tests to enable it to conduct a more comprehensive assessment of any risk for human health.

61. There are a number of causes for concern about potential threats to the quality of water for human consumption. During the visit, a number of persons mentioned uncontrolled use in farming of agricultural chemicals, some of which are even banned in other countries and which water treatment plants barely eliminate. Another risk factor for water pollution is the irregular supply already mentioned. A repeated lack of water in pipes may lead to increased pollution from infiltration by harmful substances. Furthermore, the obsolete infrastructure, in which asbestos-cement pipes are present, poses a threat to the quality of water for human consumption.

62. As far as the water supply not provided by the National Water Mains and Sewers Administration is concerned, only 1.5 per cent of the 2,325 water supply networks operated by the rural water boards comply with chlorination requirements.[20] The Special Rapporteur had a chance to talk to a mother in a rural community who said she had access only to a water source close to the heavily polluted river Acelguate. She said that the State provided people with chlorine, but only irregularly, and that her children had suffered from intestinal disorders caused by parasites, probably because the water they drank was polluted by faecal matter. The Ministry of Health is responsible for testing water quality in rural areas, but users are not informed of the results of its tests.

63. According to the Multipurpose Household Survey, in 2014, 56 per cent of households nationwide disposed of excreta and wastewater in the street. There is a sharp contrast between rural areas, where 90 per cent dispose of wastewater in this way, and urban areas, where 37 per cent do so.[21]

64. In conjunction with the almost complete lack of treatment of wastewater collected by the sewerage network, this state of affairs has a huge impact on water in the environment, with repercussions on the protection and fulfilment of human rights, since it undermines the exercise of their rights by the populations affected by water pollution. In this respect, due recognition should be given to the planning effort to rehabilitate environmental water resources, headed by the Ministry of the Environment and Natural Resources, and which include the construction of water treatment plants, which have put the issue on the national planning agenda. In this connection, the Ministry is taking steps to prevent and monitor pollution by means of inventories of emissions and concentrations in receiving environments, and plans for prior treatment of discharges.[22]

[20] National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador*, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador), 2016.

[21] Available at www.digestyc.gob.sv/.

[22] Environment Act.

D. Affordability

65. In recent years the National Water Mains and Sewers Administration has taken steps to adjust its rates structure so as to adapt cross-subsidization to real circumstances and to enable the agency to balance its budget.

66. Subsidies are granted in accordance with the category of consumer (industrial/commercial and residential/public) and by group of consumer. In September 2015, the National Water Mains and Sewers Administration published its new rates. Under this new review of rates, the highest increases applied to households with the highest levels of consumption, with the aim of granting the subsidy to people with the lowest incomes. Under the system, the lowest rate will apply to those who consume up to 20 cubic metres per month, who will be unaffected by the increase in rates. According to the National Water Mains and Sewers Administration, until the change, subsidies were granted for up to 44 cubic metres, thereby benefiting 98 per cent of consumers charged the domestic rate; at present, the subsidy applies to consumption of up to 34 cubic metres and benefits 97 per cent of consumers charged the domestic rate. The cost of the subsidy for the Administration would fall from 75 to approximately 40 million dollars, in the long term enabling the National Water Mains and Sewers Administration to achieve a more balanced budget.[21]

67. According to information given to the Special Rapporteur by a number of different social players and groups, the increased rates were not introduced transparently and there were complaints from people affected by sudden increases.

68. The Special Rapporteur recommends that measures to revise rates be conducted transparently and in a participatory manner. The Special Rapporteur also urges the national authorities to conduct research to determine whether the schedule of progressive block rates effectively guarantees cross-subsidization through financial transfers from the richest to the poorest. The assumption that lower-income families tend to consume less water does not necessarily hold. If this assumption is used as the basis for the model, it may pose problems of affordability for families who deserve to be subsidized.

69. There are situations in El Salvador that pose problems in relation to affordability. In particular, people who live in areas not covered by the National Water Mains and Sewers Administration tend to pay high prices for water and sanitation services. The Special Rapporteur was informed about people working on the coffee harvest and sugar-cane cultivation who earn 4.5 dollars a day (22.5 dollars a week) and who pay 4 dollars a week to acquire access to water, meaning they spend almost 18 per cent of their family income on water; this is unacceptable in terms of the human rights to water. It is also known that people connected to the collective networks, especially in towns, spend a far lower proportion of their income on access to water.

70. The Special Rapporteur also learned that neither the national nor the local authorities either support or provide guidance for the construction of individual sanitation solutions or help with maintenance so as to ensure proper collection and disposal of sludge. Such a lack of initiative by the State leads to problems of affordability, as it may entail high costs for individuals. It is important to continue to expand efforts to provide access to sanitation services in rural areas. The Special Rapporteur had the opportunity to acquaint himself with good practices adopted by the Social Investment Fund for Local Development in order to provide better access to sanitation, and which also foster and strengthen community management and organization. These practices have good potential for replication.

[21] National Water Mains and Sewers Administration, *Actualización de Subsidios* (Subsidies update), January 2016.

E. Sustainability

71. Measurements carried out by the National Water Mains and Sewers Administration show that there is a marked seasonal fall in rates of flow in measuring springs and wells throughout the country. Overexploitation of sources that are strategic for human consumption, such as surface aquifers and springs was reported.[24] The Special Rapporteur draws the attention of the Government of El Salvador to the obligation of States to guarantee the rights to water sustainably and without discrimination, for both present and future generations.[25]

72. The Special Rapporteur learned of a critical situation cause by overexploitation, which above all affects the aquifer located in the towns of Quetzaltepeque and Nejapa, where there is a conflict over water use. The aquifer in question is vital to domestic use for 25 per cent of the population of the capital's metropolitan area.[26] During the visit, the Special rapporteur learned of the presence of a bottling plant, La Constancia ILC, a subsidy of SABMiller, which draws large volumes of water for its commercial production of carbonated drinks, waters, juices and beers and which has plans for a possible expansion of its industrial activities.

73. On account of the potential impact of large-scale investment projects on the availability of water, the State should continue to exercise caution in granting new permits to harness water resources; this approach is illustrated by its decision, in December 2015, to bore a new measuring well to assess the impact on groundwater levels and the behaviour of the aquifer as a result of current extraction in the towns of Quetzaltepeque and Nejapa, as a prerequisite for authorizing further extraction by the above company. The sinking of the monitoring well is one of the 24 mandatory environmental compensation measures imposed on the company by the Ministry of the Environment and Natural Resources.[27]

74. Furthermore, the Food and Agriculture Organization of the United Nations has estimated that in 2005, 68 per cent of the water extracted in El Salvador was harnessed by the agricultural sector.[28] Traditionally, wastage by this sector is high and the introduction of clear national policies to rationalize the use of water by agriculture could make more water available for human consumption, particularly in regions where water resources are scarcer and more sensitive to the impact of climate change, as in the Dry Corridor. Assigning priority to use of water for personal and domestic use (drinking, personal and household hygiene, food preparation and washing clothes) in preference to other uses, such as economic activities, is a basic principle of the human rights to water and sanitation.

[24] National Water Mains and Sewers Administration, *Situación Actual del monitoreo de pozos y manantiales captados por ANDA* (Current monitoring situation in wells and springs used by ANDA), February 2016.

[25] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 11.

[26] National Water Mains and Sewers Administration, *Áreas críticas de suministro* (Areas in which supply is at critical levels), March 2016.

[27] www.marn.gob.sv/pozo-en-nejapa-monitoreara-niveles-y-calidad-de-agua-subterranea/.

[28] Food and Agriculture Organization of the United Nations, 2005, available at http://www.fao.org/nr/water/aquastat/countries_regions/Profile_segments/SLV-WU_eng.stm.

F. Impacts on health

75. In El Salvador, dehydration caused by diarrhoea is one of the leading causes of death among children under the age of 5 years.[29] It is also one of the commonest causes of progressive malnutrition, which in turn contributes to higher infant morbidity and mortality.[30] According to the Ministry of Health, cases of acute gastroenteritis and diarrhoea increased by 30 per cent in 2015 in comparison with the previous year.[31]

76. So far in 2016, the average weekly number of cases of acute diarrhoea is 5,764 cases. Between January and May, the highest number of cases occurred in San Salvador (50,885 cases) and the majority affected children under the age of 5 years (78 per cent), followed by adults more than 59 years old (6 per cent).[32]

77. The presumed impact on health of the state of drinking water and sanitation are another reason why the authorities should give priority to ensuring the human rights to these services throughout the country, as well as to a mechanism that effectively monitors and supervises the quality of water for human consumption via a transparent process involving user participation.

IV. Population groups needing special attention

A. People living in rural areas

78. In spite of the significant progress made, which is described in this report, there are still groups, such as the inhabitants of rural areas, who are excluded from proper access to drinking water and sanitation. A major recent effort at diagnosis by the National Water Mains and Sewers Administration has drawn attention to the 618,000 inhabitants of rural areas who lack access to drinking water services, in comparison with 6,000 in urban areas. According to the same data, 99 per cent of those without access to water live in rural areas. Besides this wide gap in access to water and sanitation, this report also draws attention to the marked differences in other spheres, such as the impact of drought, quality and affordability. During his visit, a child told the Special Rapporteur that because of the lack of access to water in his home, he had to spend part of his leisure time going to purchase rainwater from a neighbour's house and carrying it home. The neighbouring family had better facilities for collecting rainwater on its farm. As a result, the family ended up paying its neighbours for untreated rainwater. This example illustrates the distinct reality experienced in rural areas in comparison with urban ones.

B. People belonging to the indigenous populations

79. The indigenous peoples of El Salvador include the Nahuatl, Pipil, Lenca, Kakawira and the Maya Chorti. According to the 2007 census, the 13,319 indigenous people in El Salvador make up approximately 0.2 per cent of the country's total population, although

[29] World Health Organization (2002), information available at www.who.int/nutgrowthdb/database/countries/slv/en/; http://apps.who.int/gho/data/view.main.ghe2002015-SLV?lang=en.

[30] National Family Health Survey (2008), available at www.fesal.org.sv/.

[31] Ministry of Health, *Salud y equidad. Hasta el último rincón de El Salvador. Informe de Labores 2014-2015* (Health and equity. Into the farthest corner of El Salvador. Activities report), May 2015.

[32] Ministry of Health, *Boletín Epidemiológico* (Weekly epidemiological record), week 21 (for 22 to 28 May 2016), available at www.salud.gob.sv/tag/boletines-epidemiologicos-2016/.

this is thought to be a huge underestimate. According to some estimates, the actual figure is between 10 and 12 per cent of the national population.[13]

80. According to a World Bank report, the living conditions of indigenous peoples in El Salvador are unfavourable and unequal in comparison with those of other population groups. In 2003, 61.1 per cent of indigenous people were living in poverty, and 38.3 per cent in extreme poverty.[14] Poverty, which frequently includes lack of access to basic sanitary services and to drinking water, contributes to their precarious health situations. The World Bank has identified areas in which indigenous people experience worse health situations than other sectors of El Salvador's population. For example, the proportion of indigenous children under the age of 5 who suffered from undernutrition was 40 per cent, in comparison with 20 per cent in the country's overall population. In 2010, the Committee on the Rights of the Child expressed its continuing concern about the limited enjoyment of rights by indigenous children and at the incomplete information provided by the State party on that issue.[15]

81. During his visit, a number of representatives of indigenous peoples living in the canton of Pushtan, in Nahuizalco municipality in Sonsonate department told him that they thought that they were at the bottom of the social ladder, even below peasant farmers, in terms of access to goods and services such as water. They also thought that some economic activities, such as farming, reduce their access to water for their requirements. One of them told the Special Rapporteur that when he thinks about access to water for their peoples, "the word of law pales in the sight of money".

82. In 2013 the Special Rapporteur on the rights of indigenous peoples recommended to El Salvador that apart from any constitutional reforms and ratification of the ILO Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169), the Government should develop a legal framework within which the rights of indigenous peoples may be better protected and implemented. Government agencies and officials require specific State policies, together with better legal and regulatory guidance to determine their responsibilities as regards indigenous rights.[16] The Special Rapporteur reiterates the call made by his colleague and the importance of implementing this recommendation, which could also strengthen protection of the rights of indigenous peoples to water and sanitation.

C. People deprived of their liberty

83. People deprived of their liberty have to face particular problems as regards their rights to water and sanitation. In 2009, the Committee against Torture expressed its concern that detention centres in El Salvador lacked the conditions necessary to guarantee proper access to drinking water, health and hygiene.[17]

84. In 2010, the Rapporteurship on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights (IACHR) emphasized that one of the principal shortcomings of the penitentiary system in El Salvador is the severe overcrowding. The lack of proper physical infrastructure effectively denies access to

[13] A/HRC/24/41/Add.2, para. 6.
[14] World Bank, *Perfil de los Pueblos Indígenas en El Salvador* (Profile of Indigenous Peoples in El Salvador), February 2003, p. 33.
[15] CRC/C/SLV/CO/3-4, para. 91.
[16] A/HRC/24/41/Add.2, para. 70.
[17] CAT/C/SLV/CO/2, para. 17.

sanitation services and drinking water and could lead to the spread of respiratory diseases and skin infections among detainees.[18]

85. The mandate of the National Water Mains and Sewers Administration includes responsibility for water supply and wastewater disposal in the prison system. In the course of his mission, the Special Rapporteur had the opportunity to visit La Esperanza prison, in the town of Ayutuxtepeque, the largest penal centre in El Salvador. The prison has a capacity for 1,000 persons, although on the day of the visit it was holding 5,297 detainees. Such severe overcrowding has a heavy impact on water supply and sanitation. Water for the prison is normally supplied by the National Water Mains and Sewers Administration, although the service is frequently interrupted. This year, the prison has been without a water supply, even for the toilets, for several days in a row, compelling inmates to relieve themselves in plastic bags which are thrown away as waste, by no means a satisfactory solution to sanitation.

86. During interviews with detainees, the Special Rapporteur heard complaints and accounts describing access to water and its quality, and access to toilets. One person told him that there were times when he was thirsty for days for lack of drinking water, while others said that they were forced to suck water from a pipe in the wall, and to share the water for drinking and personal hygiene in cells shared by 15 to 25 inmates. Others complained about the physical appearance of the water provided. Many of those interviewed linked the quality and quantity of the water with their state of health, and blamed it for diarrhoea and skin infections. The cells are generally overcrowded with just a hole for defecating and urinating, which is used by 15 to 25 persons, with no privacy. The Special Rapporteur urges the Government to ensure an uninterrupted supply of water of satisfactory quality and proper sanitation for persons deprived of their liberty in this and other prisons in the country, so as to meet its obligations in respect of the human rights to water and sanitation.

87. Furthermore, information was received about the conditions of detention in the so-called "bartolinas" — places intended for short-term detention, but in which, on account of the overcrowding of the prison system, people are often held for long periods, sometimes for over a year. According to the information received, persons deprived of their liberty on these premises may be the victims of grave violations of their rights to water and sanitation.

D. Women and girls

88. Generally speaking, at times of water crisis, such as that in El Salvador during the visit, women and girls, who take on the task of ensuring their families have access to water, are those most affected. During the visit, the Special Rapporteur was able to see how not only women, but girls of some 10 years of age carried home containers holding around 10 litres of water several times a day.

89. In one rural village which the Special Rapporteur visited, women have to carry water to their homes because they are not connected to the water network. Although she might live but five minutes from the water point, counting the time spent queueing and filling her container, a woman could spend 45 minutes, twice a day, fetching water. Such tasks are potential violations of the right to education and to work, especially when they prevent girls and boys from attending school and women from working.

90. The Special Rapporteur was also informed that as a rule, men play a greater role on the rural water boards and take the most important decisions. For example, at Suchitoto, in

[18] Information available at www.cidh.org/Comunicados/Spanish/2010/104a-10sp.htm#_ftn8

Cuscatlan department, where the Suchitoto Colectiva Feminista (Suchitoto feminist collective) carried out a study, 70 per cent of the members of the rural water boards were found to be men, and only 30 per cent women. The same organization also reported that women who rise to positions of leadership have received, according to their sources, a higher number of threats. As an example worth following, the Social Investment Fund for Local Development presented a number of noteworthy experiments in which it guaranteed that in its projects, at least 40 per cent of the leadership of its boards were women.

V. Conclusions and recommendations

91. The Special Rapporteur recognizes the significant progress made by El Salvador in recent decades in improving access to water and sanitation services. These achievements point to the country's ability to extend the benefits of its development to all citizens, and especially to those living in vulnerable circumstances.

92. It should be pointed out that, regardless of whether it delegates these services, the State bears the primary responsibility for guaranteeing the human rights of all persons. In conformity with human rights law, it is incumbent on the State to promote and protect the enjoyment and full realization of human rights for all persons.

93. Investment in water and sanitation has clear benefits for peoples' quality of life and dignity; in addition, the benefits also include savings for the State in the spheres of work and health. For example, it has been estimated that each dollar invested to ensure universal access to basic sanitation services in the home achieves a saving of some three dollars for the State.

94. The Special Rapporteur finds that El Salvador has made significant efforts to achieve proper conditions of water supply and sanitation. The country's levels of coverage show that both the State service providers and local agencies are capable of effectively promoting implementation of the rights to water and sanitation. Nonetheless, further efforts are required to reach out to a number of groups that are still excluded, especially the most vulnerable, and to improve the continuity and quality of the water supply and the conditions of sanitation and wastewater management.

95. States are under the obligation to respect human rights relating to water and sanitation by moving as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable water and sanitation for all, in conditions of dignity and privacy.

96. In this connection, the Special Rapporteur recommends to El Salvador:

(a) That it strengthen the national strategy to cope with climate change, which should include the establishment of an effective mechanism to provide a timely response to future droughts and to their impact on the most vulnerable population, including the rural population;

(b) That it incorporate the right to water and sanitation into its legislation, via a reform of the Constitution and the adoption of a water resources law that gives priority to the needs of those who live in the most vulnerable circumstances, and in this connection that it:

(i) Ratify the reform of article 69 of the Constitution, to which end it is essential explicitly to include in the final text the expression "human rights to water and sanitation" which is absent from the proposal currently under consideration;

(ii) **Guarantee that the general law on water resources currently under consideration assign priority to the human rights to water and sanitation as the cornerstone of any policy and that it clearly state that priority in the use of water should be given to human consumption;**

(iii) **Set up an agency to regulate the water resources policy introduced by this law; the agency should be transparent and participatory, and the State should play a leading role in the management of water resources, with the participation of the sector's main stakeholders, giving priority to that of civil society and of those groups most disadvantaged as regards access to water;**

(iv) **Urgently adopt a framework law on the water and sanitation subsector, which focuses on the realization of human rights, provides guidance for the sector's institutions and guarantees appropriate regulation of services;**

(c) **Draw up the national plan for water and sanitation via a participatory process that involves other service providers, such as the rural water boards and representatives of civil society. The plan should set the normative substance of human rights at the core of all its assessments, proposals and recommendations and make provision for actual measures to ensure that the whole of the country's population has access to services, in conformity with the Sustainable Development Goals, to which El Salvador has subscribed;**

(d) **Set up an independent regulatory body to ensure that those who supply water comply with human rights. Such an agency should ensure genuine participation by the public in decision-making by disseminating appropriate information and guarantee that water and sanitation are affordable for all;**

(e) **Endeavour to ensure universal access to water and sanitation for populations living in the most vulnerable circumstance, including rural populations, those of peripheral urban areas and people living in the street:**

(i) **Where the rural population is concerned, the Special Rapporteur recommends that an assessment be made of the significant and successful efforts of the Social Investment Fund for Local Development, with the aim of replicating them, focusing on the adoption of appropriate and comprehensive solutions and sustainable management models that include both water supply and sanitation services;**

(ii) **The ban prohibiting the national services provider from making water and sanitation services available to illegal settlements should be re-examined, with a view to enabling the inhabitants of these settlements to exercise their rights to use those services;**

(iii) **People living in the street should be guaranteed free facilities providing access to water and toilets;**

(f) **Improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas;**

(g) **Introduce policies to ensure water security and access to water on equal conditions, guaranteeing water supply 24 hours a day 7 days a week. The level of leakage, currently 50 per cent, should be drastically reduced so as to increase the availability of water;**

(h) **Invest in achieving compliance with drinking water requirements throughout the whole country and set up an efficient mechanism effectively to monitor**

the quality of water for human consumption by means of a transparent process involving user participation;

(i) Conduct a critical assessment of the impact of environmental and agrochemical pollutants and of interruptions in water supply on the quality of water for human consumption and of the risks to health;

(j) Adopt a transparent and participatory approach to reviews of water rates, and ensure that the National Water Mains and Sewers Administration carries out research to determine whether progressive block tariffs actually ensure cross-subsidization involving a financial transfer from more affluent persons to the less affluent;

(k) Establish ad hoc programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems, by setting up social protection measures to ensure that water is affordable;

(l) Introduce clear national policies to rationalize agricultural use of water so as to increase its availability for human consumption, particularly in regions such as the Dry Corridor, where it is in short supply and which are more sensitive to climate change;

(m) Ensure an uninterrupted supply of good quality water and satisfactory conditions of sanitation for persons deprived of their liberty in the country's prisons and "bartolinas"(police jails) so as to guarantee compliance with the country's obligations in respect of the human rights to water and sanitation;

(n) Develop legislation under which the rights of indigenous peoples, including the rights to water and sanitation, may be better protected and implemented.

97. The Special Rapporteur recommends to the international community that it:

- Strengthen the support it provides to El Salvador during emergencies.

98. The Special Rapporteur recommends to the Governments of neighbouring countries that they:

- Establish a cooperative relationship by means of bi- or trilateral treaties which ensure sound management of transboundary river basins and assert that the use of water for human consumption has priority over other uses, setting the principles of the human rights to water and sanitation at their core.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Tajikistan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, on his mission to Tajikistan from 4 to 12 August 2015.

In the present report, the Special Rapporteur notes that, under the framework of the Millennium Development Goals, the country achieved a high coverage of access to improved water and sanitation. Most of the country's infrastructure is on the verge of collapse, and the level of services may not meet the new criteria under the Sustainable Development Goals unless the Government proactively intervenes and safely manages small-scale water and sanitation solutions, in particular in rural areas.

In order to seize the opportunities available in the current water sector reform process, the division of power and responsibilities among the authorities of the State needs to be urgently clarified and regulation must be made independent and separate from the provision of services. The revision of the Water Code of 2000 must place the human rights to water and sanitation at the core of the legislation. A new comprehensive tariff system is also needed and must balance affordability of water and sanitation for all with the sustainability of those services.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Tajikistan*

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* Circulated in the language of submission only

I. Introduction

1. The Special Rapporteur on the human right to water and sanitation, Léo Heller, undertook an official visit to Tajikistan from 4 to 12 August 2015, upon the invitation of the Government, to examine the progress made and remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country. During his mission, he had the opportunity to meet with different interlocutors, including the Minister for Foreign Affairs, the Deputy Minister of Energy and Water Resources, the Deputy Minister of Finance, the Deputy Minister of Health, the Chair of the State Committee on Investments and State Property Management, the Speaker of the parliament, local authorities, the Human Rights Ombudsman, the Housing and Communal Service (*Khojagii Manizliyu Kommunali*), Dushanbe Vodokanal, civil society organizations and international donors and agencies. He visited prison YC 3/7 in Dushanbe. He also visited communities in Teppai Samarkandi and Balkhi village (Rudaki district), Lolazor village (Danghara district), Pulisangin village (Norak district) and Spitamen new settlement and Andarsoi village (Spitamen district). He talked to community leaders, human rights defenders, women, children and medical practitioners.

2. The Special Rapporteur expresses his appreciation to the Government of Tajikistan for the cooperation shown before and during the mission. He thanks the United Nations country team for the support and assistance provided. Lastly, the Special Rapporteur wishes to thank all the people who took the time to meet with him and to help him better understand the situation concerning access to water and sanitation in the country.

3. After its independence from the Union of Soviet Socialist Republics, Tajikistan experienced a long civil war, from 1992 to 1997. Its economy has been fragile, with a per capita gross domestic product (GDP) that is among the lowest of the 15 former Soviet republics. According to United Nations statistics, 80 per cent of the population lives below the poverty line. Only 7 per cent of the country's land surface is arable, yet agriculture employs 75 per cent of the labour force and contributes 23 per cent of GDP.

4. Tajikistan has rich water resources, some of the richest in the world. Nevertheless, it still relies on old infrastructure installed during the Soviet era to provide water and sanitation services to the population. As Tajikistan relies heavily on remittances from Tajik migrant workers abroad (30 per cent of GDP), income has decreased dramatically as a result of the international economic crisis. At the international level, Tajikistan is a lead country with regard to water issues and took the initiative in the declaration by the General Assembly of 2005-2015 as the International Decade for Action, "Water for Life". Tajikistan has also hosted several international forums on water.

5. Despite its political and economic situation, by the end of 2015 the country had achieved high rates of access to "improved" water sources (74 per cent) and impressive rates of access to "improved" sanitation (95 per cent), according to definitions of access under the monitoring of the Millennium Development Goals by the Joint Monitoring Programme for Water Supply and Sanitation.[1] An examination of the quality of services behind these figures, however, shows that approximately 40 per cent of the population relies on non-centralized water supply sources, which often do not meet water quality standards and provide insufficient amounts of water. Even water sources used for the centralized system, which comprises the majority of water supply systems, likely do not

[1] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), *Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment* (2015). Available from www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015_English.pdf.

meet sanitary requirements. Regarding sanitation, only 15 per cent of the population enjoys access to a sewer connection. Even where sewerage is available, grey water is usually discharged in open drains. The averages mentioned above also mask persistent inequality between rural and urban areas. In the former, 31 per cent of the population has access to piped water on premises; by comparison, 83 per cent of urban dwellers do. In addition, the data do not capture marginalized groups of people such as refugees, asylum seekers and stateless people (approximately 0.2 per cent of the population).

II. Legal, institutional and policy frameworks

A. Legal framework

6. At the international level, Tajikistan has ratified relevant international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Therefore, it has legal obligations to take concrete and deliberate steps to ensure the progressive realization of the human rights to water and sanitation, using the maximum of its available resources. This means that every individual in the country is entitled to have the authorities take measures to ensure, as soon as possible, access to water and adequate sanitation that are accessible, available, affordable, acceptable and safe, in all spheres of life, including with the provision of dignity and privacy for sanitation. These distinct aspects of the rights were explicitly recognized by the Human Rights Council in 2013 in its resolution 24/18 and by the General Assembly in 2015 in its resolution 70/169. The realization of these rights also requires ensuring access to adequate and affordable hygiene practices, including handwashing and menstrual hygiene management. Effective measures have to be taken to ensure adequate disposal and treatment of human waste. Furthermore, the Government also has an immediate obligation to ensure access to water and sanitation facilities and service on a non-discriminatory basis, especially for disadvantaged or marginalized groups. The State has an obligation to progressively eliminate any type of inequality in access to water and sanitation.

7. At the regional level, Tajikistan has not signed the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, which is a pan-regional protocol. However, Tajikistan actively participates in activities related to this Protocol. For example, it voluntarily reported on the status of water and health in the country in 2013. One of the Protocol's areas of focus is equitable access to water and sanitation. The Economic Commission for Europe developed a scorecard on equitable access to water and sanitation, which integrates the human rights principle of equality and non-discrimination. In order to further strengthen its legal foundation concerning the human rights to water and sanitation, Tajikistan is encouraged to sign and ratify the Protocol.

8. The Constitution of Tajikistan, amended in 1999, protects basic human rights, including the right to life, the right to housing and the right to health care, though it does not explicitly guarantee the right to water and sanitation. The Constitution recognizes the supremacy of international law over national law, which obliges Tajikistan to make national legislation comply with international human rights obligations, including those regarding the rights to water and sanitation.

9. The human rights to water and sanitation need to be translated into laws, policies and budgets. The principal national pieces of legislation in the area of access to water and sanitation are the Tajik Water Code (2000), the Law on Drinking Water and Drinking Water Supply (2010) and the Law on State Sanitary Supervision (2003). The current Water Code does not sufficiently address the issue of access to water and sanitation for personal

and domestic use. The Law on Drinking Water and Drinking Water Supply establishes the provision of drinking water for everyone. The Law on State Sanitary Supervision provides the right of citizens to receive complete and reliable information about the state of the environment and health of people and about the quality of drinking water. It also provides that "the inhabitants of cities and other settlements shall be provided with safe drinking water in sufficient quantities for the satisfaction of physiological and economic needs of humans", and that the quality of water should "correspond to existing sanitary rules" (arts. 15 and 16). At the time of the Special Rapporteur's visit, Tajikistan was carrying out water sector reform and the Water Code of 2000 was under revision. Tajikistan has a strategic opportunity to give prominence to the human rights to water and sanitation, since clear legal and institutional structures are an important first step towards realizing these rights. The Special Rapporteur was encouraged by the openness shown by both the Government and the Parliament to take on board the need to place the human rights to water and sanitation at the centre of new policy and legislation.

B. Institutional and policy frameworks

10. The Ministry of Energy and Water Resources has the overall responsibility for guaranteeing the national drinking water supply and coordinating relevant actors in the water sector. It is also responsible for the adoption and implementation of State programmes for the development of potable water supply systems, the establishment and regulation of water tariffs and the provision of public information. The Ministry of Health has the responsibility for surveillance of the quality of drinking water according to the Sanitary Norms and Rules (2007), which is based on World Health Organization (WHO) guidelines. In each district, there are laboratories for microbiological and chemical tests. According to the Ministry of Health, there is a large project planned to improve the capacity of these laboratories. Information about the quality of water is disseminated to the population in the form of bulletins issued by the Statistics Commission at the sanitary centres.

11. Water supply and sewerage services in seven cities (Dushanbe, Khujand, Chkalovsk, Rogun, Kayrakkum, Nurek and Sarband) and two districts (Varzob and Spitamen) are provided by Vodokanal, a State unitary enterprise under the local authorities. Vodokanal operates on a self-financing basis, without any budget from the cities and the Government. The expansion of infrastructure, however, is carried out from city budgets. Vodokanal reports to municipalities or to the regional representatives of the Housing and Communal Service and submits monthly reports.

12. The Housing and Communal Service is a State unitary enterprise which regulates and operates communal services, including water supply and sanitation for other cities, towns and settlements, through its regional subsidiaries. The Service is a self-funded enterprise, relying on tariff incomes and donor funds or loans. In rural areas, the Department of Rural Water Supply (*Tojikobdehot*), which was privatized and placed under the control of the Service in 2012, is responsible for water supply and sanitation systems. It tends to focus on water for irrigation, however. The 2009-2010 reform allows local governments to own services and infrastructure and to outsource water and sanitation service provision to private companies and non-governmental institutions.

13. Tajikistan is currently reforming its water sector, aiming firstly to separate policy and regulation from operation, and secondly to carry out a transition in river basin management based on the national development strategy of 2007. The current structure of water and sanitation services is rather fragmented. The division of power and responsibilities among the Ministry of Energy and Water Resources, the Housing and Communal Service, Vodokanal and local authorities is not clear. For example, in

apartments in large cities. Vodokanal is responsible for supplying water to apartment buildings, and the Housing and Communal Service is responsible for providing cold and hot water inside the buildings. Many people, however, told the Special Rapporteur that they could not easily reach the right institution when there was a problem with water or sanitation systems. According to the information received, it has been considered whether Vodokanal should be placed under the Housing and Communal Service as part of the reform process. Secondly, under the current institutional framework, there is no adequate government structure to address access to water and sanitation in rural areas. The Government should not be absent from the management of individual or small-scale water and sanitation solutions. It is important to streamline the structure to provide more coherent services but also to clarify where responsibility lies and to strengthen accountability.

14. For water and sanitation services, the role of the regulator is an essential part of accountability mechanisms. Currently, there is no independent regulator in Tajikistan and, as far as the Special Rapporteur was informed, there is no discussion about establishing one as part of the water and sanitation sector reform. The Government makes some regulatory efforts with regard to water, including through the establishment of standards and the monitoring of water quality, but the scale of surveillance is not sufficient. The vast majority of sanitation solutions are not regulated, managed or monitored by any State body. The Special Rapporteur calls on the Government, as part of the ongoing water sector reform, to assign specific responsibilities for expanding water supply, and regulating and managing water and sanitation, not only for those who are connected to formal systems but also for those who are outside of them, in the short to medium term. Furthermore, the Government should start a discussion on the establishment of an independent regulator with competence to monitor the compliance of water and sanitation providers with the normative content of the human rights to water and sanitation. Such a regulator should also be given the mandate to encourage genuine public participation in decision-making, with proper disclosure of information, and to ensure a mandatory affordability standard in order that water and sanitation are affordable for all.

15. The Government of Tajikistan has created water users associations[2] as a separate tool for the management and operation of irrigation water. A government official explained to the Special Rapporteur that the creation of the associations was part of the effort to introduce public-private partnerships in the management of water systems, as well as in other sectors such as energy. Upon the request of the Government, the Economic Commission for Europe carried out a public-private partnership readiness assessment in 2012-2013. The study pointed out the need to make the legal framework compliant with international standards and the need for a stronger institutional framework and institutional capacity-building, among other preparations, for the implementation of public-private partnerships.[3] The assessment also recommends that the Government consider "devolving the regulatory functions to newly created independent bodies, with the line ministries keeping the responsibility for policymaking and planning in their respective sector" as one of the criteria for successful private sector participation in infrastructure projects.[4]

16. From a human rights perspective, it is important to find solutions to improve the financial situation of water and sanitation service providers in order to guarantee sustainable service provision. The human rights framework does not prescribe any particular modality of service provision. Regardless of the decision to include the

[2] Water Users Association Support Project and Integrated Water Resources Management in Ferghana Valley project, "An approach to water users associations in Tajikistan" (2009).

[3] Economic Commission for Europe (ECE), "National PPP readiness assessment report: Tajikistan" (2013), p. 29.

[4] Ibid., p. 47.

participation of non-State actors in such provision, the Government of Tajikistan should first develop a comprehensive plan, including legislation, strategy and financing, aimed at progressively realizing the human rights to water and sanitation for all without discrimination. In this framework, the Government will be able to decide on the best modality to balance both the affordability of water and sanitation services, even for the poorest and most marginalized, and the sustainability of service provision (see A/HRC/15/31). In the case of private provision, the Government should carefully assess the risks of jeopardizing the access of the poorest people, given the needs of infrastructure expansion and the lack of a regulatory tradition relating to water and sanitation. The Special Rapporteur would also like to remind the Government that, in cases in which the provision of water and sanitation services is delegated to third parties — either private or public enterprises — the Government is obligated to regulate the activities of those institutions to ensure that all aspects of human rights are guaranteed. At the same time, those institutions have human rights responsibilities, and they can and should support the State in the realization of the human rights to water and sanitation.

17. With regard to the policy framework, the national development strategy[1] is the country's principal policy document in the water and sanitation sector. The strategy notes that water supply and sanitation are essential to economic growth and the improvement of living conditions. The main priorities for the water sector in the strategy include: reforming the existing water supply and sewerage system through the improvement of sectoral policy and the creation of new ownership entities; making the sector more attractive to investors; and making effective use of the sector's existing potential. The water sector development strategy for 2007-2015[2] sets out a comprehensive strategy, including for water supply and sanitation. The strategy sets as priorities improving rural water systems and the quality of water and water treatment, rehabilitating existing water and sanitation systems and promoting a strong tariff policy, among other goals. These are welcome initiatives that should be strongly framed by the principles and contents of the human rights to safe drinking water and sanitation.

18. The Government informed the Special Rapporteur that it holds a national policy dialogue on water twice a year with civil society organizations and international communities, and that water sector reform has been discussed through that platform. It is an encouraging initiative. The Government should strengthen such efforts to provide an open space for civil society, in particular women, to meaningfully, actively and freely participate in decision-making related to the reform process in order to address people's real needs. Discussions on the participation of non-State actors in the provision of water and sanitation service should be included in the agenda for wide consultation.

III. Human rights to water and sanitation

A. Access to water and sanitation

19. Water and sanitation services must be accessible to everyone, on the premises of households, health and educational institutions, public institutions and places, and workplaces.

[1] Republic of Tajikistan, "National development strategy of the Republic of Tajikistan for the period to 2015" (2007).

[2] Ministry of Irrigation and Water Management of the Republic of Tajikistan, United Nations Development Programme (UNDP) Office in the Republic of Tajikistan and Executive Committee of the International Fund for saving the Aral Sea, "Water development strategy in Tajikistan" (2006).

20. At the end of the time frame for achieving the Millennium Development Goals in 2015, Tajikistan had achieved high rates of access to "improved" water sources (74 per cent) and "improved" sanitation (95 per cent). Tajikistan has also eradicated open defecation. When breaking down these figures by the quality of services, however, the water supply and sanitation infrastructure has deteriorated by an estimated 70 per cent according to the water sector development strategy. As of 2012, 25 per cent of the centralized systems in urban areas were not in working condition and required major repairs or replacement, while in rural areas, 44 per cent of the systems were functioning only partially, and 16 per cent were not in working order.[7] Approximately 40 per cent of the population, and nearly half of the rural population, still relies on non-centralized water supply sources such as springs, wells and water trucks, which often do not meet water quality standards and do not provide sufficient amounts of water. The majority of water sources used for the centralized system do not meet sanitary requirements either.[8] Regarding sanitation, it is estimated that more than 90 per cent of the rural population uses a pit latrine with slab. Only 15 per cent of the population enjoys access to a sewer connection (44 per cent in cities and 3 per cent or much less in villages).[9] Even where sewerage is available, grey water is usually discharged in open drains. Wastewater treatment facilities are available in cities, including an advanced one in Dushanbe. However, the rehabilitation of sewerage and treatment facilities has not been conducted over the past 20 years, and this has resulted in reduced effectiveness of wastewater treatment. In small towns and rural areas, wastewater produced by households and industries is discharged into the soil, drainage system or bodies of water without treatment.[10]

21. While people culturally keep houses and toilets very clean, good hygiene practices are not well observed. According to a rapid assessment conducted in three districts (Rasht, Isfara and Kulob) in 2014, on average only 2 per cent of the women washed their hands with soap at four critical moments (after using the toilet, before cooking, after cleaning a child and before feeding a child). Some improvement was observed under a donor project whereby mothers washing their hands at four or more critical times increased from a 3.46 per cent baseline in 2013 to 17.45 per cent in 2015 in 12 districts of Khatlon oblast.[11] Poor hygiene practices are partly due to a lack of public awareness and partly due to the unavailability of facilities and materials such as soap.

B. Quality of water and sanitation services

22. In Tajikistan, most water supply systems were constructed between 1960 and 1980, with an operational life of 30-50 years.[12] Most of them need to be rehabilitated or reconstructed, as there has been no maintenance. The old infrastructure has a negative impact on the quality of water. A high level of water leakage poses a threat of intrusion of polluted groundwater and other harmful substances. The insufficient treatment facilities are

[7] UCC and Government of Tajikistan, "Target setting in the context of the Protocol on Water and Health in the Republic of Tajikistan (summary of the main report)" (2013).

[8] Of the country's 764 water systems, 463 do not meet sanitary requirements. See *UN-Water Global Analysis and Assessment of Sanitation and Drinking Water* (2014), Tajikistan country highlight.

[9] *UN-Water Global Analysis and Assessment of Sanitation and Drinking Water* (2014), Tajikistan country highlight.

[10] UCC and Government of Tajikistan (2013).

[11] Mid-term evaluation of Mercy Corps project under Feed the Future programme of the United States Agency for International Development (USAID).

[12] UNDP, *Country Sector Assessments, UNDP GoAL WaSH Programme — Governance, Advocacy and Leadership for Water, Sanitation and Hygiene* (New York, 2010), vol. 2, chapter on Tajikistan.

not able to ensure adequate water quality for drinking. Most of the people the Special Rapporteur interviewed told him that they did not drink water without treating it, or felt that water for drinking was not safe. The Special Rapporteur himself observed cases of brown water in cities.

23. Under the Ministry of Health, sanitary epidemiological surveillance laboratories located in every district monitor the quality of drinking water, as well as the hygienic standards of water services provided by suppliers. According to the official information received, some of the samples do not meet the State water quality standard set in 2007. Monitoring of water quality, in particular of non-centralized water sources, is still very limited. (No more than 15 per cent of water from the non-centralized system is monitored.) Water suppliers also have self-monitoring mechanisms for water quality. Dushanbe Vodokanal, for instance, submits monthly, quarterly, biannual and annual reports to the city of Dushanbe. However, water suppliers are not obliged to report the results to any authorities.

24. The responsibility for sanitation, except for those who are connected to sewerage in parts of large cities, is almost entirely placed on individual households. Only about a quarter of the population in total and only 0.2 per cent of the rural population was estimated to have sustainable access to centralized waste treatment plants as of 2013.[13] The vast majority of the population constructs pit latrines and empties or replaces them without any financial or technical support from the Government. Although the prices for emptying pits have to be approved by the Anti-Monopoly Agency, and the service is provided by the Housing and Communal Service, people are expected to pay high, and sometimes unaffordable, prices for this service. The Special Rapporteur was impressed by the well-constructed and clean pit latrines in many households. Pit latrines with slabs could be an acceptable solution if they follow certain standards, including the protection of groundwater. However, there currently seems to be no adequate support from the Government to provide guidance regarding latrine construction and sludge management. The Special Rapporteur underlines that it is the Government's obligation to ensure that toilets are hygienic to use and maintain, and that waste matter is safely contained, transported, treated and disposed of or recycled, even if such services are delegated to other entities.

25. Due to these deficiencies in water, sanitation and hygiene, waterborne pathogens, such as those which cause diarrhoea and typhoid fever, are still widespread, in particular in rural areas. High rates of infant and under-5 mortality (41 per 1,000 and 48 per 1,000, respectively, in 2013)[14] and child malnutrition compared with other Central Asia countries may be partly attributable to poor water, sanitation and hygiene. To safeguard the health benefits of access to sanitation and to protect water resources, standards and targets for the full cycle of sanitation provision must be set, from the collection of waste to its transport, treatment and disposal or reuse.

26. The Law on State Sanitary Supervision provides that "[t]he inhabitants of cities and other settlements shall be provided with safe drinking water in sufficient quantities for the satisfaction of physiological and economic needs of humans".[15] However, water services are sporadic, mainly due to an unstable supply of electricity and despite the ample water resources available in the country. The irregular water supply, coupled with ageing water

[13] ECE and Government of Tajikistan (2013).

[14] UNICEF, "Levels and trends in child mortality: report 2014 — estimates developed by the UN Inter-agency Group for Child Mortality Estimation", pp. 22-23.

[15] Art. 15 (1) of Law No. 987 of 20 July 1994.

pipelines, further exacerbates the problem of water loss (50-60 per cent).[15] In 2015, the Committee on Economic, Social and Cultural Rights recommended that "the State party take all the necessary measures to improve access to safe drinking water, adequate sanitation and electricity, and to reduce the current disparities between urban and rural areas in this regard" (see E/C.12/TJK/CO/2-3, para. 28). One of the Government's priorities for development is to increase hydropower capacity, in order to provide regular electricity supply and to export energy.[16] At the time of the visit, the Government was striving to secure funding for or to start implementing hydropower projects and the construction and rehabilitation of water and sanitation infrastructure.

C. Balancing affordability and sustainability of water and sanitation

27. The human rights to water and sanitation require that the price of water and sanitation and the direct and indirect costs and charges associated with it be affordable and not compromise or threaten a person's capacity to satisfy other fundamental human rights, such as the rights to food, health, housing or education. The human rights framework does not require that Governments directly provide basic services for free. Rather, it requires States to create an enabling environment for people to fully enjoy their human rights. However, in cases in which people cannot accede to their rights for reasons beyond their control, including when they cannot afford to construct sanitation facilities, Governments have the obligation to provide sanitation services directly.

28. In Tajikistan, there is no established policy on water and sanitation tariffs. The operators set water and sanitation tariffs and submit them for approval to the Anti-Monopoly Agency. In many parts of Tajikistan, the water tariff for those connected to centralized systems, sometimes including the sanitation tariff, is a flat rate of 0.7 to 1.4 somoni (equivalent to approximately $0.10-$0.20) per person per month (up to $1 per household of five family members per month). The installation of water meters has started, but only in large cities, and the tariff is charged according to the amount of consumption (0.42 somoni per cubic metre for water and 0.53 somoni for water and sewerage by Dushanbe Vodokanal; 0.8 somoni for water by the Housing and Communal Service). The flat tariff without meters does not give users an incentive to save water, and some use drinking water for farming, irrigation or other non-domestic activities. This model also has no way of taking into account the needs of the poorest and can result in tariffs that are unaffordable to them. According to Dushanbe Vodokanal, the cost of producing 1 cubic metre of water is 0.91 somoni ($0.12). Yet, the water tariff set by the Housing and Communal Service for State-owned enterprises (1 somoni per m^3) is almost the same as the tariff for domestic users. The water tariff for private industrial use is also relatively low (2 somoni per m^3). District authorities used to provide sludge collection services for 150 somoni ($19), but according to the information received, one collection now costs as much as twice that.

29. From a human rights perspective, the low flat tariffs applied in most situations raise a couple of concerns. Firstly, they end up subsidizing people and enterprises who can afford to pay a higher tariff. This means that people who are not connected to the centralized system, who are usually worse off, not only lack necessary assistance from the Government to realize their human rights to water and sanitation but also may indirectly subsidize the rich through taxes. For example, the Special Rapporteur observed that people in rural areas pay more than double for an informal system of less reliable and less accessible water.

[15] Republic of Tajikistan, "National development strategy of the Republic of Tajikistan for the period to 2015", p. 40.

[16] Ibid.

Secondly, this situation also raises the concerns that the utilities do not collect enough revenue to invest in operation and maintenance or to extend the connection networks to those who are not served. While legislation allows the setting of a full-cost recovery tariff, the current approved tariffs are set well below that level.[17] The Special Rapporteur was informed that the Housing and Communal Services had proposed increasing the tariff by 14 per cent, but that the Anti-Monopoly Agency had rejected that proposal.

30. In addition, the low tariff collection rate, which is reported to be 60 per cent, raises concerns about the sustainability of water and sanitation services. According to a source, the head of the Housing and Communal Service expressed concern about the low tariff collection rate from enterprises, including a large aluminium company. According to the source, the collection rate from the public amounts to 98 per cent and is not the most worrisome issue;[18] the problem lies instead with enterprises that are already benefiting from a low tariff.

31. According to the Ministry of Finance, the Government allocates the State budget and the development budget for water supply and sanitation services; however, the allocated budget is very limited. Less than 0.2 per cent of the State budget of $4.1 billion goes to the Housing and Communal Services, which is responsible not only for water and sanitation services but also for regulating and operating State-owned housing, cleaning streets and performing other communal services. This budget also covers the cost of water and sanitation services that the Housing and Communal Service provides to public institutions. The Housing and Communal Service informed the Special Rapporteur that its debts were accumulating, and amounted to as much as $3 million somoni. It has no funds to invest in maintenance, repairs or system improvements. Another 4.7 per cent ($36 million) of the State budget is allocated to the local authorities, who are responsible for, among many other things, overall water supply and sanitation. While depending on budgetary allocations by local administrations, the amount of the budget allocated for water supply and sanitation is almost invisible in many districts. The national and local budgets must have specific allocations or budget lines for water, sanitation and hygiene for households and public institutions. The Government also must prioritize those who are not served or who are underserved.

32. Nevertheless, Tajikistan ranked fourteenth out of 117 countries in the 2015 Water, Sanitation and Hygiene for All Performance Index, a quantitative measure of the progressive realization of the human rights to water and sanitation.[19] This is a positive indicator that Tajikistan performs well in investing its maximum available resources to progressively realize the human rights to water and sanitation without discrimination. The Index compares the rates of change of specific countries in improving equity and access to water and sanitation to best-in-class rates of change among countries at similar levels of water and sanitation coverage to generate a benchmarked value. The benefits of investing in water and sanitation are evident in improved health and reduction of time lost from work. Such investment averts illnesses such as diarrhoea, reducing child mortality and malnutrition, and increasing productivity among adults and school attendance among children, especially girls. For each $1 invested in achieving universal access to basic sanitation at home, the estimated benefit is $3. The Government of Tajikistan is encouraged

[17] Drinking water tariff research and development of the Tajikistan water and sanitation project: mission report of international consultant Marie Kremer (Swiss Agency for Development and Cooperation, Tajikistan Water Supply and Sanitation Project and Oxfam GB in Tajikistan, 2013). Available from www.tarwss.tj/new_images/tariff_en.pdf.

[18] "Water prices to rise in Tajikistan", *Asia-Plus* (10 July 2014).

[19] Kyan Cronk and others, "The WaSH performance index report" (The Water Institute at the University of North Carolina at Chapel Hill). Available from http://bit.ly/1RhcaX.

to intensify its efforts to increase investment in this area through all potential financial sources.

33. Sustainability is a fundamental human rights principle essential for realizing the human rights to water and sanitation. Water and sanitation services must be available for present and future generations, and the provision of services today should not compromise the ability of future generations to realize those rights (see A/HRC/24/44). Once services and facilities have been put in place, positive changes must be maintained and deterioration prevented. During the mission, the Special Rapporteur observed that much of the infrastructure installed during the Soviet period had not been maintained or refurbished. According to the information he received, many people in rural areas were experiencing a deterioration of water and sanitation services due to ageing infrastructure. Considering that human rights need to be realized progressively and continuously, the deterioration of already acquired access could amount to a human rights violation.

34. At the same time, the sustainability and affordability of water and sanitation services have to be balanced. Cost recovery is an important element of a sustainable system, ensuring the coverage of operation and maintenance costs and supporting access to water and sanitation by the poor through cross-subsidies. Currently, there has been no household-level survey on the ability to pay in Tajikistan, and therefore there is no information available on how many and which households cannot afford to pay water and sanitation tariffs. The Special Rapporteur was informed that there was a general rule to provide tariff support to households with teachers, soldiers, veterans and members of other groups. There is, however, no assessment of actual vulnerability or the economic situation of households as a whole.

35. With support from international donors, the Government began a revision of the policy for water tariffs. Tariffs must be set to balance the affordability of water and sanitation for all and sustainability of the services. A new tariff system should include a way to charge better-off households and other users, enterprises in particular, higher tariffs, while poorer households should be guaranteed a lower tariff and access to subsidy mechanisms. The Special Rapporteur calls on the Government to develop and adopt a comprehensive water and sanitation tariff policy which ensures sustainability and takes into account the special needs of those who cannot afford their water bill. Similar affordability standards for sanitation must be established. In setting such standards, the Government must consider both on-site and networked sanitation, along with the full costs of sanitation, including the collection, transport and disposal or reuse of human waste.

D. Water, sanitation and hygiene in public institutions

36. According to a subnational survey carried out in 2008, the water coverage rate in health facilities was only 38 per cent, the sanitation coverage rate was 43 per cent and hygiene coverage data were not available.[9] At a primary health-care facility visited by the Special Rapporteur, there was a water tap but it was not connected to water. The WHO standards for water, sanitation and hygiene in health facilities require on-site water supplies of 5-400 litres per person per day, on-site sanitation facilities and a reliable water point with soap or alcohol-based rubs available in all relevant areas. The absence of running water and adequate sanitation facilities in the majority of the country's hospitals not only discourages the population from using health services but also presents great challenges in terms of public health, including infection prevention and control, and hygiene promotion. The

[9] WHO and UNICEF, *Water, Sanitation and Hygiene in Health Care Facilities: Status in Low- and Middle-Income Countries and Way Forward* (2015), annex C.

Ministry of Health informed the Special Rapporteur that the State budget allocated to the health sector was insufficient to ensure water, sanitation and hygiene services in all the health facilities in the country. Despite such a poor water, sanitation and hygiene situation in health facilities, the Government's plan and targets for improved services do not include drinking water or sanitation in health facilities.[36]

37. Water, sanitation and hygiene in schools also pose a great challenge. Many schools have very old water and sanitation facilities, many of which are not functioning or do not meet hygiene standards. As a result, children may need to drink water from ditches and girls may have no access to adequate sanitation and hygiene facilities, particularly during menstruation. According to a sample survey carried out in 2009, the water coverage rate in schools was about 55 per cent and the sanitation coverage rate was about 17 per cent.[37] In a school with 1,400 children in a village visited by the Special Rapporteur, there were only four toilets available for girls and four toilets available for boys. While Tajikistan has achieved a high school enrolment rate, a significant number of girls drop out in the ninth grade (24 per cent in 2009) and the dropout rate for girls in the tenth grade is 10 per cent higher than that for boys.[38] Poor sanitation facilities, including the absence of menstrual hygiene management, may be a contributing factor. Menstrual hygiene management, which ensures privacy and human dignity, is an important but often overlooked component of the human rights to water and sanitation. The Ministry of Education included the provision of drinking water and sanitation-hygiene services in schools as one of the objectives in the national strategy for education development through 2020. However, according to the information received, a sufficient budget has not been allocated to the provision, maintenance and management of water, sanitation and hygiene in schools.

IV. Access to information, accountability and justice

38. Tajikistan is a party to the International Covenant on Civil and Political Rights, which protects the right to freedom of expression. Article 30 of the Constitution guarantees freedom of speech and the right to use means of mass information. The right to information includes the right to receive information to make informed decisions regarding the human rights to water and sanitation.

39. The Special Rapporteur observed that information on water bills, as well as water quality, is not very clearly explained to the public. He received complaints about non-transparent and unreliable procedures for collecting tariffs, particularly due to the absence of water meters in most areas. Access to such information is a human right, but it would also encourage the population to contribute to the efficiency of water supply systems. There is currently no established complaint mechanism, partly because of the absence of an independent regulator and partly because of the current unclear division of responsibilities. While the service providers claim that there are complaint mechanisms through websites, e-mails, emergency telephone lines and monthly reporting to cities, the process for finding out whom to call when users have problems with water and sanitation services seems to be a complicated one. The Government should undertake additional efforts to make information related to essential services widely available and accessible, and set up clear accountability mechanisms.

[36] *UN-Water Global Analysis and Assessment of Sanitation and Drinking Water* (2014): Tajikistan country highlight.

[37] "WASH in schools country profile: Tajikistan". Available from http://washinschoolsmapping.com/wengine/wp-content/uploads/2015/10/TajikistanWinSCountryProfile.pdf.

[38] USAID: school dropout prevention pilot programme: overview of Tajikistan programme (see http://schooldropoutprevention.com/country-data-activities/tajikistan/).

40. The Anti-Monopoly Agency approves water and sanitation tariffs and the Ministry of Health plays a surveillance role with regard to water quality. However, there is no independent regulator to monitor the performance of the Housing and Communal Service, Vodokanal and local authorities in providing water and sanitation services. Establishing a mechanism whereby people can bring forth human rights concerns is crucial to hold those who are in a position of responsibility accountable for the human rights to water and sanitation. The first Human Rights Ombudsman was appointed in 2009 "with the aim of strengthening the constitutional guarantees of the State protection of the human rights and freedoms, their observance and respect" based on the Law on the Human Rights Ombudsman (2008). The Ombudsman was accredited with a "B" status by the International Coordinating Committee of National Human Rights Institutions (renamed the Global Alliance of National Human Rights Institutions in March 2016), which means that it is not fully in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). According to the Ombudsman, a working group has been established to discuss public accountability, including the accountability of utilities, in which he himself participates. The second strategy of the Ombudsman's office, for the period 2016-2020, includes economic, social and cultural rights, including the human rights to water and sanitation, as among its priorities. While all of these initiatives are commendable steps, there has been criticism of the Ombudsman's office for its lack of political will to deal with sensitive cases.

41. Together with strengthening the independence of the Ombudsman in terms of the transparent appointment, legal protection and financial stability, the strengthening of civil society is also key to a stronger accountability mechanism. The Special Rapporteur was informed of widespread self-censorship among civil society based on fear. Laws and policies that could potentially weaken civil society organizations, including newly adopted amendments to the Law on Public Associations, should be reviewed.

42. In addition, Tajikistan should make the human rights to water and sanitation enforceable at the national level. At the international level, the Special Rapporteur calls upon the Government to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which will allow people to bring individual cases regarding the human rights to water and sanitation to the attention of the Committee on Economic, Social and Cultural Rights.

V. Marginalized and excluded persons

43. As stated above, despite overall progress, disparities in access to water and sanitation between urban and rural areas, and between some population groups, are significant in Tajikistan. The present section will illustrate the situation of some of the populations who have particular difficulties in gaining access to water and sanitation and those who met with the Special Rapporteur during his mission.

A. People living in rural areas

44. In Tajikistan, the vast majority of the population (over 70 per cent) lives in rural areas, and the rural population has been increasing.[7] Yet, drinking water and sanitation issues in rural areas seem to be overshadowed by the Government's concentrated efforts on irrigation water. In the area with the least access, the Kurgan-Tyube zone of Khatlon oblast, only 25 per cent of the population has access to safe drinking water, and more than half of

[7] World Bank data on rural population (see http://data.worldbank.org/indicator/SP.RUR.TOTL).

the population uses water from open sources, which is epidemiologically unsafe.[27] The Department of Rural Water Supply (*Tajikobdehtud*) provides the rural population with drinking water and water for the irrigation of pastures. The water sector development strategy for the period 2007-2015 refers to the construction of local water supply systems in rural areas as one of its priorities. However, the strategy does not place particular focus on rural sanitation.

45. As mentioned above, the majority of the rural population is not connected to the centralized water supply, while an estimated 27 per cent use surface water directly from rivers, irrigation channels and canals and another 6 per cent use other unimproved water sources.[28] It is not surprising that most infectious waterborne diseases are found in rural areas.[29]

46. The lack of access to water puts a significant burden on women and children. According to a study, in Muminabad and Rudaki, women and girls under the age of 14 spend 4-6 hours daily fetching water.[30] Women in Tajikistan spend a lot of time cleaning houses and latrines for cultural reasons as well. The time that women and girls spend on domestic work significantly reduces the time that could otherwise be spent on working and studying.

47. Over 90 per cent of the rural population is estimated to use a pit latrine with slab. Those who manage pit latrines do so entirely by themselves. This high rate of pit latrine usage contributed to a very high coverage rate of sanitation in Tajikistan under the monitoring of the Millennium Development Goals, as it was considered an "improved" sanitation service. Under the new Sustainable Development Goals, safe management of sanitation will be required to meet the target on "adequate" sanitation. A pit latrine managed by individual households may not meet this target if excreta is not safely disposed of, which is usually the case, since the Government currently does not seem to provide any guidance on latrine construction and sludge management.

48. The Special Rapporteur observed that people in rural areas, who are often poorer, pay much more to secure water than those who are connected to the centralized system. The more remote from the district centre in which they live, the higher the prices that they are charged for sludge collection services. Some people told the Special Rapporteur that sludge collection used to be 100-150 TJS ($13-$19), but now it is 300-500 TJS ($38-$64), depending on the distance of the house from an urban centre. Depending on the size of the family, a pit latrine needs to be emptied either quarterly or annually. Even if individual households are managing water and sanitation in rural areas, the Government cannot abdicate its responsibilities in dealing with rural sanitation and water supply in order to ensure equal, affordable and safe access to water and sanitation.

B. Resettled people

49. As one of the pressing priorities for development, the Government is implementing the Rogun Dam and Hydropower Plant project to ensure a stable supply of electricity

[27] *UN-Water Global Analysis and Assessment of Sanitation and Drinking Water (2014) – Tajikistan country highlight*.

[28] Data as of 2015. See WHO and UNICEF Joint Monitoring Programme for Water Supply and Sanitation, estimates on the use of water sources and sanitation facilities. Available from www.wssinfo.org/documents/?tx_displaycontroller[type]=country_files.

[29] UNDP, *Country Sector Assessments UNDP GoE WaSH Programme*, vol. 2, chapter on Tajikistan.

[30] Lena Krylova and Nigora Safarova, "Gender Assessment SDC Rural Drinking Programme in Tajikistan" (Swiss Agency for Development and Cooperation, 2013), p. 6.

throughout the year and to lower the cost of electricity, as well as to export energy to neighbouring countries. This megaproject includes the relocation of 42,000 people (7,000 families). According to one study, between 2009 and early 2014, about 1,500 families were displaced from the reservoir area in Rogun and Nurabod districts to four locations.[10]

50. During the visit, the Special Rapporteur met with communities in Rudaki district and Khatlon oblast who had been displaced from Rogun and Nurabod districts because of the dam project. While the Government had started making efforts to provide water to the settlements in these resettlement sites, due to a lack of planning, people were still suffering from insufficient amounts of water for human consumption and for subsistence farming. In both these districts, water supply was limited to a few hours per day at the maximum. People raised concerns to the Special Rapporteur that they had been given much smaller plots of land and that they did not have enough water to grow vegetables in their yards, when previously, in their original villages, they had had enough water for vegetation and livestock. Regarding sanitation, resettled people had had to build toilets, as well as houses, by themselves. The Government had paid compensation based on an assessment of market value, and the compensation that the resettled people had received had not included labour costs. People had had to give up their work and devote their labours to constructing their houses and toilets. This inadequate compensation had had a greater effect on marginalized individuals such as female-headed households, people with disabilities and older persons because they could not build a house and thus needed to seek out manual labour. In the new settlement of Spitamen, people had no access to a water supply and were buying water from water trucks, which was insufficient, unsafe and unaffordable. Initially, the people had chosen this settlement because of the possibility of extracting groundwater. However, they had not been informed of the enormous costs required to pump water from the aquifer.

51. The current hardship of the resettlements was also an outcome of the lack or absence of participation of the communities in designing and carrying out the new settlements. People seem to have been provided with limited information and, therefore, their needs such as access to sufficient water for subsistence farming had not been reflected in the plan of the resettlements. As defined in the basic principles and guidelines on development-based evictions and displacement (developed by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living): "All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider."[11]

52. In addition, the Government should carry out comprehensive impact assessments prior to the initiation of any project in order to fully protect the human rights of all populations that are to be affected by displacement. In the case of the Rogun Dam and Hydropower Plant project, upon the request of neighbouring countries, the World Bank financed two studies. Following the assessments, the World Bank also issued a paper which mentioned the economic impact of the resettlement, including the displacement of livelihoods, stating that: "Additional attention would need to be given to managing social impacts in order to move forward in a manner consistent with international good practice".[12] Neither of the assessments, however, applied the human rights framework,

[10] Human Rights Watch, "'We suffered when we came here': rights violations linked to resettlements for Tajikistan's Rogun Dam" (2014).

[11] Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I), para. 38.

[12] World Bank, "Key issues for consideration on the proposed Rogun hydropower project", para. 40.

According to the information the Special Rapporteur has received, no human rights impact assessment has been done either by the Government or by donors.

C. Refugees, asylum seekers and stateless people

53. The Special Rapporteur was informed that there were approximately 2,000-4,000 refugees and asylum seekers in the country. In 2010, the Committee on the Rights of the Child recommended that the Government should "provide access to clean drinking water, adequate sanitation, food and shelter in all regions and communities of the country, including the refugee population" (see CRC/C/TJK/CO/2, para. 59 (c)). The Government's policy, however, does not allow refugees and asylum seekers to live in large cities, which means that they are excluded from access to the centralized water supply and sanitation services.

54. The Special Rapporteur was also informed that there were about 10,000 stateless persons and persons at risk of statelessness who were not entitled to social protection. After the dissolution of the Soviet Union in 1991, nearly 60 million people in Central Asia lost their citizenship.[71] Even though a law on the legal status of foreigners in Tajikistan accords foreign citizens and stateless persons a range of essential services, the provisions of the law apply only to permanent residents, who are formally recognized as "stateless" by the State. According to a study conducted by the UNHCR, undocumented stateless people are not entitled to essential services in Tajikistan.[72]

55. In its general comment No. 20, the Committee on Economic, Social and Cultural Rights states that the Covenant rights apply to everyone regardless of ground of nationality, including those with an undocumented status and non-nationals, such as "refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (see E/C.12/GC/20, para. 30). The Special Rapporteur urges the Government to revise its laws and policies in order to ensure equal access to essential services, including water and sanitation for refugees, asylum seekers and stateless persons.

VI. Conclusions and recommendations

56. **Tajikistan is known as a champion of water at the global level, taking the lead in the International Decade for Action, "Water for Life". Under the framework of the Millennium Development Goals, the country achieved high coverage of access to improved water and sanitation. The levels of service may not meet the new criteria under the Sustainable Development Goals, though, and most of the country's infrastructure, which was built during the Soviet period, is on the verge of collapse. The lack of water and sanitation in public institutions is a serious concern with regard to the human rights to water and sanitation, and has a direct negative impact on other rights, such as the rights to health, education, work and life. The Government should translate the commitment made at the global level into national legislation and policies, budgetary allocation and implementation, particularly to eliminate disparities in access to water and sanitation and to address the needs of the most vulnerable groups, including women and girls in rural areas, resettled people and refugees, asylum seekers and stateless persons. Seizing the opportunities in the current water sector reform process, the division of power and responsibilities among**

[71] United Nations High Commissioner for Refugees, "Statelessness in Central Asia" (May 2011).
[72] Ibid.

State authorities needs to be urgently clarified. It is particularly important that regulation be made independent and separate from the provision of water and sanitation. The revision of the Water Code of 2000 must place the human rights to water and sanitation at the core of legislation. A new comprehensive tariff system is also needed and must balance affordability of water and sanitation for all with the sustainability of those services. The application of increased rates will give industries, public institutions and households incentives to save water, and hence contribute to the sustainable management of water resources as well.

57. In rural areas, more than one third of the population still uses unimproved water sources, including surface water without treatment, and most of the people construct and manage pit latrines without support from the Government. Such poor water, sanitation and hygiene conditions in rural areas, in the absence of the management by the Government, are contributing to high rates of infant and under-5 mortality and childhood malnutrition caused by waterborne diseases. Tajikistan must not abdicate its responsibilities in dealing with rural water and sanitation issues. Rather, the Government should take the primary responsibility for ensuring safe water and sanitation management regardless of the administrative nature of the provider. The Government must also invest in sanitation and water services to guarantee affordable services for the poor and marginalized. By investing in sanitation and water, Tajikistan would make significant economic gains in the form of savings on health-care costs and related productivity losses.

58. The Government of Tajikistan should now become a champion of sanitation and water for its own people, taking advantage of the opportunities in the ongoing water sector reform.

59. In this regard, the Special Rapporteur recommends that the Government of Tajikistan:

(a) Revise the Water Code and place the principles and normative content of the human rights to water and sanitation at the centre of the law. The Water Code should have an explicit provision on the prioritization of water for personal and domestic use;

(b) Clearly define the division of power and responsibilities between the Ministry of Energy and Water Resources, the Housing and Communal Service, Vodokanal and local authorities under the water sector reform;

(c) Revise the national policy and strategy and prioritize rural water and sanitation;

(d) Develop guidance and review financial support regarding latrine construction and sludge management to ensure that toilets are hygienic to use and to maintain and that waste matter is safely contained, transported, treated and disposed of or recycled;

(e) Urgently strengthen the capacity of water quality monitoring and surveillance to ensure safe water;

(f) Review the tariff system comprehensively and increase the rate for those sectors which are capable of paying more, taking into consideration the sustainability of water and sanitation services and affordability for all;

(g) At the same time, adopt safeguard mechanisms to protect access to essential water and sanitation for those who live in poverty and those who have special needs, including health conditions;

(h) **Invest in rehabilitation and reconstruction of old infrastructure, as well as in the maintenance and operation of new and existing services, in order to avoid deterioration in the services currently provided. The Government should seek international assistance with clear plans;**

(i) **Improve access to water, sanitation and hygiene in public institutions, in particular schools and health facilities, as a matter of priority, and install menstrual hygiene management systems in all public institutions;**

(j) **Start a discussion without delay on the establishment of an independent regulator with competence to monitor the compliance of water and sanitation service providers with the normative content of the human rights to water and sanitation;**

(k) **Protect the right to information and strengthen the accountability mechanism, including through strengthening the power of the Ombudsman, as well as respecting the activities of civil society;**

(l) **Review laws and policies that could potentially weaken civil society organizations, including newly adopted amendments to the Law on Public Associations, and provide a wider space for civil society to openly discuss policies and people's needs relating to access to water, sanitation and hygiene, with capacity for actual influence in decision-making processes;**

(m) **Provide adequate reparation to the displaced population whose human rights, including the rights to water and sanitation, have been violated, and carry out human rights impact assessments for any development projects in order to guarantee non-repetition;**

(n) **Revisit the policies on refugees and asylum seekers, as well as on nationality and statelessness, with a view to providing equal access to essential services, including water and sanitation, for everyone in the country without discrimination;**

(o) **Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and guarantee the human rights to water and sanitation as justifiable rights in national legislation;**

(p) **Accelerate its preparation for signing and ratifying the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.**

90. **The Special Rapporteur recommends that the international community:**

(a) **Strengthen and enhance coordination of the provision of financial and technical support to Tajikistan, in particular with regard to improving rural water and sanitation and rehabilitating ageing infrastructure;**

(b) **Assist the Government in implementing development projects, including hydropower projects, with full respect for and protection of the human rights of the affected population.**

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, on his mission to Botswana from 9 to 17 November 2015.

Botswana has made impressive progress in development mainly in urban areas, but there are striking inequalities in access to water and sanitation in rural and remote areas, resettlements and poor urban settlements. People living in transition from nomadic to settled life and women and girls suffer the lack of access to water and sanitation disproportionately.

The Government of Botswana should take the extreme drought experienced in 2013 as a learning opportunity to develop a comprehensive strategy to provide uninterrupted access to safe drinking water and sanitation in the foreseen increasing water stress. At the same time, the Government must continue to invest in sanitation and water services to guarantee affordable services for the poor and for marginalized groups.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the human right to water and sanitation, Léo Heller, undertook an official visit to Botswana from 9 to 17 November 2015, at the invitation of the Government. The purpose of the visit was to examine the progress made and identify remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country.

2. During his mission he had the opportunity to meet with representatives of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Minerals, Energy and Water Resources, the Ministry of Health and the Ministry of Environment, Wildlife and Tourism. He also met with the Attorney-General, the Water Utilities Corporation, the Ombudsman, local authorities, civil society organizations and the international community. He visited communities, health facilities and schools in Old Naledi (Gabarone), Kasane, Maun, Sexaxa, Ghanzi, D'Kar, Tubu, Shakarawe and New Xade and talked to community leaders, human rights defenders, women, children and health workers.

3. The Special Rapporteur expresses his appreciation to the Government of Botswana for its cooperation before and during the visit. He thanks the United Nations Resident Coordinator and the country team for their support and assistance. He also thanks all the people who took the time to meet with him and to help him better understand the situation regarding access to water and sanitation in the country. The Special Rapporteur quotes one of the elders with whom he met: "*Metsi ke botshelo jwa motho; motho a ka setshele a sena metsi*" (Water is life; no water, no life).

4. Botswana has been successful in terms of economic growth and development, with one of the world's highest economic growth rates since independence in 1966. Its economy relies on diamond mining, tourism, subsistence farming and cattle raising, all of which demand a great amount of water. Yet, 19 per cent of the population live below the national poverty line and unemployment stands at 20 per cent. Botswana has a semi-arid climate and water resources are scarce. At the time of the visit, Botswana was in an emergency situation, with one of the worst droughts in its history. A significant part of the population was facing severe water shortage and people in the Greater Gaborone area and other cities were under starker water rationing on top of the regular water rationing, with several consecutive days in a week without any supply of water.

5. The Special Rapporteur was impressed by the resilience of the people as well as by the Government's efforts to provide the essential amount of water to the population despite the difficult situation. However, he noted that water rationing hit the poor and people living in vulnerable situations hardest. The severe water scarcity level raised serious human rights concerns about water quality, water quantity, affordability, sanitation conditions and related health impacts. As water stress in Botswana is predicted to continue to rise owing to the effects of climate change and increasing water demand, the Government should not simply consider the water scarcity caused by the long drought as a sporadic emergency. Severe environmental situations should not be immediately translated into water shortage situations that affect people's access to water.

6. Despite the difficult geographical and environmental conditions, Botswana has made impressive overall progress in the water and sanitation sector, with 96 per cent access to

improved water and 63 per cent access to improved sanitation as of the end of 2015.[1] Rural sanitation is still poor and a significant percentage of people still practice open defecation. The Special Rapporteur commends the Government's efforts to submit responses to the UN-Water Global Analysis and Assessment of Sanitation and Drinking Water for the first time in 2014.

II. Legal, institutional and policy frameworks

A. Legal framework

7. Botswana has ratified the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. These international treaties contain legal obligations on the human right to life and obligations related to access to water and sanitation. However, Botswana is one of the few remaining countries that have not yet ratified the International Covenant on Economic, Social and Cultural Rights — a strong legal basis for the human rights to water and sanitation. The Special Rapporteur strongly encourages Botswana to sign and ratify the Covenant as a legal foundation. Recognition of the human rights to water and sanitation is a crucial first step towards realizing access to water and sanitation for all without discrimination. The Covenant does not expect the State to realize these rights immediately. Rather, it provides a framework and guidelines on how to progressively implement these human rights.

8. Botswana has ratified regional human rights treaties, such as the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child, which obliges States parties to take measures to ensure the provision of adequate nutrition and safe drinking water.

9. International laws are not self-executing in Botswana. They require legislative implementation to be effective in national law. Nevertheless, Botswana is bound by international human rights law and principles. Access to safe drinking water and sanitation is a human right derived from the right to an adequate standard of living, which is enshrined in, inter alia, article 11 of the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights. These rights were explicitly recognized by the General Assembly in resolutions 64/292 and 70/169 and by the Human Rights Council in resolution 15/9.

10. According to international human rights law, the State must take concrete and deliberate steps to progressively realize the human rights to water and sanitation. The realization of these rights also requires providing access to adequate and affordable hygiene practices, including handwashing and menstrual hygiene management. Effective measures have to be taken in order to ensure adequate disposal and treatment of human waste. The Government also has an immediate obligation to ensure access to water and sanitation facilities and service on a non-discriminatory basis, especially for disadvantaged or marginalized groups. Even in cases where water and sanitation service provision is delegated to third parties — either private or public companies — the Government is obliged to regulate and monitor the activities of those companies in order to ensure that all aspects of the human rights are guaranteed.

[1] See World Health Organization (WHO) and United Nations Children's Fund (UNICEF), Progress on sanitation and drinking water — 2015 update and MDG assessment (New York, 2015), pp. 58-59, available at www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015_English.pdf.

11. The human right to water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. The human right to sanitation entitles everyone to have physical and affordable access to sanitation that is safe, hygienic, secure, acceptable and provides privacy and ensures dignity, in all spheres of life. These distinct contents of the rights to water and sanitation were explicitly recognized by the Human Rights Council in 2010 in its resolution 24/18 and by the General Assembly in 2010 in its resolution 70/169.

12. The human rights to water and sanitation need to be translated into laws, policies and budgeting. The Constitution of Botswana contains provisions on human rights, including the right to life, but does not explicitly recognize the human rights to water and sanitation. The Water Act (1967) is the principal legal instrument on water and it provides that any person may enjoy "casual use of water in a public stream" for drinking, washing and cooking. However, the Act does not sufficiently deal with water supply and sanitation issues. Botswana also has the Waste Management Act (1998), which defines management of wastes including wastewater, and the Public Health Act (1984), which mandates environmental health officers to ensure that water from the public water supply system is potable.

B. Institutional and policy frameworks

13. The Ministry of Minerals, Energy and Water Resources has the overall responsibility for the coordination of development and operational activities of the minerals, energy and water sectors. The Department of Water Affairs of the Ministry has the role of assessment, planning, development and maintenance of water resources for domestic, agricultural, commercial, industrial and other uses in the whole country. As defined in the Water Act (1967), the State has delegated the power to grant water rights to the Department of Water Affairs and the Water Apportionment Board. The Ministry has a decentralized system whereby the Department of Water Affairs is responsible for developing water resources and handing them over to the Water Utilities Corporation for distribution. Botswana is composed of 16 districts, which are administered by 16 local authorities (district, city or town councils).

14. Botswana carried out a water sector reform between 2000 and 2003, owing to the National Water Master Plan Review, with the aim of separating the roles of water resource management, service delivery and regulation. Following the reform, the Water Utilities Corporation took over drinking water service delivery and wastewater management in all urban areas and in mining centres. At the district level, emptying of latrines and disposing of sludge were handed over from the district authorities to the Water Utilities Corporation. The Water Utilities Corporation, originally created in 1970 by the Water Utilities Corporation Act, is a State-owned company. The Corporation comprises a Chairman and members appointed by the Minister of Minerals, Energy and Water Resources. An audit committee comprising three members of the Corporation oversees the financial reporting process and monitors the Corporation's performance compliance with laws and regulations.

15. The Ministry of Health formulates health policies and ensures their correct interpretation and implementation throughout the healthcare system. It is also responsible for the surveillance of drinking water quality. It has the authority to request the results of water tests from the Water Utilities Corporation, however, there is no agreement mechanism for reporting water quality to the Ministry of Health.

See Botswana Water Act (1967), art. 4 (b).

16. Currently, there is no independent water regulator in Botswana. The Botswana Energy and Water Regulatory Agency Taskforce was established in 2012 with the aim of creating an independent regulator for both the energy and water sectors, including setting tariffs. The competence of an independent regulator is reportedly still under discussion. The role of a regulator is essential as part of the accountability mechanisms. The Special Rapporteur, therefore, calls upon the Government to establish an independent regulator with the competence to monitor the compliance of water and sanitation providers with the normative content of the human rights to water and sanitation. The regulator should be mandated to encourage genuine public participation in decision-making and proper information disclosure and to ensure a mandatory affordability standard in order that water and sanitation are affordable for all.

17. With regards to the policy framework, Botswana's water policy is based on the Botswana National Water Master Plan (1991) as well as on the National Water Master Plan Review (2006), which recommended a series of institutional reforms in the water sector. According to information received, the draft national water policy (2012) was awaiting approval by the Parliament at the time of the Special Rapporteur's visit. The policy stipulates that all water resources belong to and are controlled by the State and are "held in trust on behalf of the people of Botswana". The three essential principles are equity, efficiency and sustainability. The policy considers that "water is a basic human necessity" and prioritizes access to water for "the basic requirements required for human consumption" over livestock, commercial and industrial uses. The policy states that "gender and social equity in accessing water resources will be ensured and, in particular, women shall be empowered to participate fully in issues and decisions relating to sustainable development and management of water resources". These principles are in line with the human rights to water and sanitation, which requires equality and non-discrimination in access to water and sanitation as well as the prioritization of water for personal and domestic use over other uses. The policy also provides for the sustainability and management of water through a participatory process. Both sustainability and participation are important human rights principles.

18. The Special Rapporteur urges Botswana to approve the draft national water policy as soon as possible in order to set the framework for implementing the human rights to water and sanitation, based on its law and policy. He also encourages Botswana to stipulate the prioritization of water for personal and domestic use over other uses, as well as other principles associated with the human rights, not only in policy but in law.

III. Human rights to water and sanitation

A. Access to water and sanitation

19. Water and sanitation services must be accessible to everyone on the premises of households, health and educational institutions, public institutions and places and workplaces.

20. As of the 2015 deadline for the Millennium Development Goals, 96 per cent of the population enjoyed access to improved water sources. Botswana increased coverage for piped water on premises by 52 percentage points during the period from 1990 to 2015[6] and

[5] See Botswana National Water Policy (October 2012), sect. 3.2.2, available at www.water.gov.bw/images/Water%20Policy_November_2012.pdf.

[6] See WHO/UNICEF, "Progress on sanitation and drinking water", p. 11.

is one of 16 countries that increased access to piped water on premises by at least 25 percentage points during that period. As of the end of 2015, Botswana had realized 63 per cent access to "improved" sanitation. These are commendable achievements.

21. While Botswana has significantly expanded piped water networks, access to piped networks in rural areas still remains at 45 per cent. In remote areas such as the Okavango Delta, the proportion of households with access to "improved" water sources is even lower. In rural areas, only 43 per cent have access to improved sanitation. A significant proportion of the population (14 per cent), particularly in rural areas (34 per cent), still practice open defecation. Open defecation is not only a matter of public health, but also a matter of dignity and privacy. Under the 2030 Agenda for Sustainable Development, ending open defecation is an urgent priority.

22. Access to water and sanitation by urban poor is equally a concern. The Self-Help Housing Agency runs a settlement upgrading and low-income housing programme and the councils used to provide water at water standposts free of charge. The population in those areas mostly use pit latrines, which can be a concern for contamination of the groundwater. The high density of the population, such as in the self-help housing areas in Gaborone, is considered a direct cause for increased contamination and deterioration of water sources.[1] Migration from rural to urban areas is continuing and the urban population (58 per cent in 2015) now exceeds the rural population (42 per cent in 2015). The Water Utilities Corporation is carrying out projects to shift from pit latrines and septic tanks to sewerage networks, which is a necessary measure for densely populated areas.

B. Availability of water supply

23. Botswana relies primarily on surface water and groundwater in aquifers as its water sources. There are eight major dams that supply mainly urban areas, while most rural areas are supplied from boreholes. Most of the rivers are located in the northwest, while the population is increasingly concentrated in the urban areas in the south, where rainfall is lower. Therefore, in addition to scarcity of water resources, the country suffers a geographically uneven distribution of water. Furthermore, the major rivers are shared with neighbouring countries, which makes it more challenging to secure stable water resources. The Government has concluded several agreements and commissions with neighbouring countries for sound water management. In 2013, as one of the measures to address the issue of water scarcity, the Government signed a memorandum of understanding with Lesotho and South Africa to initiate a feasibility study on the possibility of transferring water from a river in Lesotho to Botswana. Water demand is expected to grow from 200 million cubic metres in 2013 to 335 million cubic metres by 2020, and more than half of it will be consumed by the domestic sector and small industries.[2] The average consumption for personal and domestic use per capita remains relatively acceptable in villages (0.15 cubic metres or 150 litres per day). In cities and towns, however, consumption can be as high as 0.55 cubic metres or 550 litres per day.[3]

[1] Botswana, *Population and Housing Census 2011: Analytical Report* (Statistics Botswana, 2014).

[2] Botswana, Ministry of Minerals, Energy and Water Resources, *Botswana Integrated Water Resources Management & Water Efficiency Plan*, vol. 1, main report (May 2013), available at www.gwp.org/Global/Activities/Impact%20Stories/Further%20reading/IWRM%20WUE%20Plan.pdf.

[3] Government of Botswana and United Nations Development Programme, "Reflecting on the challenges of attaining a green economy for Botswana: water policy brief" (2012), available at https://sustainabledevelopment.un.org/content/documents/1007national%20Report%20Water%20-%20Botswana.pdf.

24. Rainfall is already decreasing and the temperature rise in Botswana is expected to exceed the world average. A study shows that, with the combination of climate change and an increasing demand for water, the level of water stress in Botswana is expected to double from 1.48 (low-medium risk) in 2010 to 3.00 (high risk) in 2040.[5] One government official with whom the Special Rapporteur met during his visit admitted that Botswana would face a catastrophic situation if the current level of water availability continued and if further measures were not taken to address it. Given the already water scarce environment in Botswana, there is an urgent need for the Government to take strategic measures to secure water resources, on the one hand, and to manage water demand, on the other hand. Another challenge to water resources management in Botswana is the fact that self-providers consume half of the water in Botswana for their own use in agriculture, mining and other sectors. The Government has been making efforts to manage water demand, for instance, by investing in technology for efficient water use in mining, agriculture and other industries. One of the priorities of the Ministry of Environment, Wildlife and Tourism is water conservation and wastewater management. However, the Government needs to take a comprehensive approach to prioritize the securing of water for personal and domestic use and allocate sufficient institutional, financial and human resources to manage water resources and water demand. The Special Rapporteur takes the opportunity to remind the Government that the human rights to water and sanitation provide useful guidance for all these measures, including planning for resilience to climate change. The human rights framework includes the principles of sustainability and non-retrogression, equality and participation as well as the right to information. Prioritization of water for personal and domestic use (i.e., drinking, personal and household hygiene, food preparation, washing of clothes, personal sanitation) over other uses of water must be explicitly guaranteed.

25. Water rationing is regularly implemented as a measure to address the scarcity of water resources. Consequently, the supply of water is unreliable. Given the extreme drought situation at the time of the visit, the Ministry of Minerals, Energy and Water Resources had imposed stricter water rationing measures. In late October and the beginning of November 2015, only limited areas of the Greater Gaborone area had a regular supply of water, while some areas had water with low pressure and others had no water at all. Those who had the means were buying water from private companies and storing it in large tanks. Many people with whom the Special Rapporteur met in Gaborone were simply storing water in buckets and jugs. In a health centre that the Special Rapporteur visited, there was no water in the toilets or in the examination rooms. In fact, the centre was in the process of procuring a water tank, in the middle of the drought, with the support of the Government. Since Botswana constantly experiences water scarcity and water rationing, contingency plans, such as the installation of large water tanks in public institutions, must be put in place and implemented in advance. One of the human rights obligations of States is that water supply must be continuous. Moreover, retrogression in access to water can be considered a human rights violation. While controlled water rationing may be unavoidable in extreme situations, frequent lack of water in pipelines can lead to increased contamination of the water mains through the intrusion of harmful substances. Experience suggests that water rationing through intermittent supply is a false economy, as this invariably leads to increased losses. Rationing also poses a pattern of discrimination as it impacts the most disadvantaged hardest.

26. Water loss is a serious concern in a water scarce country like Botswana. Half of the water produced is wasted due to leakage and inefficient management practices. By

[5] Andrew Maddocks, Robert Samuel Young and Paul Reig, "Ranking the world's most water-stressed countries in 2040" (World Resources Institute, 2015), available at www.wri.org/blog/2015/08/ranking-world%E2%80%99s-most-water-stressed-countries-2040.

increasing available water resources or reducing water losses, a 46 per cent increase in water availability can be expected." Under the leadership of the Ministry of Minerals, Energy and Water Resources and with support from international partners, the Water Utilities Corporation, for instance, is implementing a project to reduce water loss by up to 22 per cent by 2018. The Corporation announces the current water supply situation and the water shutdown schedule. Reportedly, it also visits households and schools to encourage water saving by repairing leaking taps and pipes. These are welcome efforts as stakeholder participation and their right to information are essential to managing water losses and wastage and increasing water availability.

27. Water resources management and the provision of water and sanitation services are inextricable. Sustainable water resources are inseparable from sustainable water provision. The Government needs to develop a concrete strategy to increase the availability of water through other measures and not rely on intermittent supply on a long-term basis. Water allocation also needs to be transparent and participatory, taking into account competing water demands. The human rights to water and sanitation do not define a fixed daily water quantity, however, they do oblige the Government to set standards for the availability of water and sanitation by assessing local conditions and requirements and referring to relevant studies. The Government needs to take it into consideration that children, pregnant women and people with chronic diseases are particularly vulnerable to illnesses, such as diarrhoeal diseases, when sufficient water is not available. The 2012 draft national water policy does not specify the target water quantity per household or per capita. However, it states that the Government will "determine and regularly update water demands and supply options for all areas supported by service strategies for medium- and long-term planning". In an environment in which water stress is expected to increase, it is particularly important to set up a system to continuously monitor and evaluate available water resources options so as to respond to water demand.

C. Quality of water and sanitation services

28. The Botswana Standards for Drinking Quality Water Specifications requires that potable water meet its minimum standard and that of the World Health Organization Drinking Water Quality Guidelines. The Water Utilities Corporation monitors the quality of drinking water according to this standard. While the Ministry of Health has the responsibility of surveillance of drinking water quality and performs some tests, its role does not seem effective since there is no systematic exchange of information on sampled water quality between the Ministry of Health and the Water Utilities Corporation. The Water Utilities Corporation is not obliged to report the results of its monitoring to the surveillance entity either.

29. According to the official data provided by the Water Utilities Corporation, the compliance level of microbiological analysis of 8 out of 34 monitoring areas in the period from July to September 2015 was below 50 per cent and in 3 monitoring areas, there was no proper data available. This is a worrying result as water safety is one of the critical normative content of the human right to water and has a direct impact on people's health.

30. While the Water Utilities Corporation monitors the quality of borehole water that is not connected to the network, the Special Rapporteur was informed that the results of water quality monitoring is not systematically or easily available for concerned consumers. In villages that the Special Rapporteur visited, some people stated that the Water Utilities

[9] Government of Botswana and UNDP, "Reflecting on the challenges of attaining a green economy for Botswana", p. 5.

Corporation sometimes collected samples of water, but they had never been informed of the results. The right to information concerning access to water and sanitation is an important element of human rights and people have the right to be informed of the quality of the water that they are consuming and of the associated risks. The Government also has a responsibility to provide guidance to conserve the quality of water in boreholes.

31. Regarding the quality of sanitation services, as of 2015, approximately one-fourth of households had access to waterborne sanitation. There are two major wastewater treatment facilities in Gaborone and Francistown, however, wastewater treatment is not sufficiently carried out. The Special Rapporteur was informed that the capacity of the Francistown facility was currently not sufficient. Some localities use stabilization ponds for wastewater treatment, however, the lagoons are usually overloaded and not adequately maintained.

32. On the other hand, almost half of the population use pit latrines either on their premises or in shared facilities. Pit latrines with proper slabs could be an acceptable solution if they maintain certain standards, including the protection of groundwater, and provide privacy, especially for women and girls. If the household is located in an area where the groundwater table is shallow, the Government will not give permission to use pit latrines or septic tanks with soakaway, but will rather encourage the use of conservancy tanks. Nevertheless, support from the Government in providing guidance regarding latrine construction and sludge management appears insufficient. As a consequence, potential contamination of water sources caused by inadequate management of pit latrines is still a concern in the country.

33. In the Special Rapporteur's view, the Government could explore alternative sanitation in rural areas, for instance, composting toilets, as a measure for adapting to the effects of climate change. These types of solutions significantly reduce water demand and also contribute to protecting precious water sources from wastewater contamination. The human right to sanitation does not stop at access to a toilet. Sanitation is defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. People in rural areas told the Special Rapporteur that they were happier with the water supply and pit latrine emptying services that used to be provided by the district authorities. According to them, water provision became unreliable and emptying latrines became unaffordable after the Water Utilities Corporation took them over. They expressed concern that it was difficult to identify who to consult when problems with water and sanitation occurred. The Government has the obligation to ensure that toilets are hygienic to use and to maintain and that waste matter is safely managed even when such services are delegated to other entities. To safeguard the health benefits of access to sanitation and to protect water resources, standards and targets for the full sanitation cycle must be set, from wastewater collection to transport, treatment and disposal or reuse.

34. Related to the quality of water and sanitation services, waterborne diseases, particularly diarrhoea, are still common, in particular in rural areas. While a decrease in the death rate was reported by WHO for 2000 to 2012, diarrhoea was still the cause of 6 per cent of deaths of children under 5 years old in 2013. The under-five mortality rate for 2013 was 47 per 1,000 live births,[7] with an estimated 180 under-five deaths due to diarrhoeal diseases.[8] Responding to the severe drought, in August 2015, the Ministry of Health issued a statement on precautions and interventions to be taken during water and power cuts. It indicated that water shortages at that time might result in public health hazards and advised

[7] See WHO, "Botswana: WHO statistical profile" (last updated January 2015), available at www.who.int/gho/countries/bwa.pdf?ua=1&ua=1.

[8] See UNICEF, "Botswana: Statistics", available at www.unicef.org/infobycountry/botswana_statistics.html.

several precautionary measures such as boiling water. Fortunately, according to relevant authorities and health workers who the Special Rapporteur interviewed, there had been no reports about diarrhoea outbreaks due to the extreme water shortage at the time of the visit. The Government should keep an eye on developments as the lack of water often leads to unhygienic conditions and high risks of water-related diseases.

D. Affordability of water and sanitation

35. The human rights to water and sanitation require that the price of water and sanitation and the associated direct and indirect costs and charges be affordable and not compromise or threaten a person's capacity to satisfy other fundamental human rights, such as the rights to food, health, housing or education. The human rights framework does not require that the Government directly provide basic services for free. Rather, it requires the State to create an enabling environment for people to fully enjoy their human rights. However, in cases where people cannot accede to their rights for reasons beyond their control, including when they cannot afford to construct sanitation facilities, the Government has the obligation to provide sanitation services directly. In situations where people do not have the economic capacity to access drinking water at all, as is usually the case of people in situations of homelessness or chronic unemployment, the Government also has the obligation to ensure access to water, in some cases, free of charge.

36. Botswana currently does not have an affordability standard for personal and domestic water or sanitation use. The 2012 draft national water policy proposes a strategy to "monitor household expenditure on domestic water supplies to ensure affordability such that the maximum household expenditures account for less than 5 per cent of household disposable income". The Special Rapporteur again encourages Botswana to adopt the draft national water policy as soon as possible and to focus its efforts on its implementation. Setting a standard and a monitoring mechanism is an important step for realizing affordable access to water and sanitation. There are several different international recommendations regarding what proportion of household income should be spent on water and sanitation but, from a human rights perspective, additional measures must be put in place in order to ensure that no one who cannot afford to devote that percentage of their income to water and sanitation for various reasons is deprived of adequate sanitation and sufficient quantities of safe and accessible water.

37. Under the water sector reform that started in 2009, the Water Utilities Corporation streamlined its tariff schemes: one for the public sector and another for domestic, commercial and industrial use. The Corporation adopted an increasing block tariff system with a minimum fee of 20 pula (approximately $1.71) for the latter sector and 50 pula for the public sector. For domestic, commercial and industrial use, the tariff starts at 2 pula for the first five cubic metres, increasing to 8 pula (5 to 15 cubic metres), 13 pula (15 to 25 cubic metres), 20 pula (25 to 40 cubic metres) and 25 pula (above 40 cubic metres). In addition, the Water Utilities Corporation charges all customers for wastewater services connected to the central wastewater systems and applies an increasing block tariff without a minimum fee. The tariff is 0.5 pula for the first five cubic metres, increasing to 2 pula (5 to 15 cubic metres), 3 pula (15 to 25 cubic metres), 4 pula (25 to 40 cubic metres) and 5 pula (above 40 cubic metres). Based on the average consumption per capita per day in rural areas, a household of four is estimated to pay about 163 pula ($14) per month. In rural areas, approximately 13,000 households live below $1 per day as of 2009/10.[7] For those

[7] See Botswana, *Botswana Core Welfare Indicators Survey 2009/2010*, main report, vol. 1 (October 2013), available at www.bw.undp.org/content/dam/botswana/docs/Poverty/Botswana%20Poverty%20Survey%202009_2010.pdf.

households, water and sanitation charges may not be affordable. In fact, the Special Rapporteur heard complaints about water disconnections owing to non-payment of water bills. It is contrary to human rights principles to disconnect water when people do not have the means to pay their bills. There should be a safeguard system for persons living in poverty and persons with special needs, including health conditions.

38. In rural areas, 47 per cent of households still rely on unimproved water sources, including public water standpipes. Public water standpipes had been free of charge for over 40 years, but the Water Utilities Corporation is introducing prepaid metres for the public water standpipes. This new charge is likely to affect people living in rural areas, whose income levels are often lower than those living in urban areas. While the human right to water does not require the provision of water for free and it is understandable that some charges will encourage people to save water at the water points, the Special Rapporteur is concerned about the general application of the new charge. He is also concerned that there is no clear safety net for those who cannot afford the new charge.

39. The Special Rapporteur was concerned about a similar situation regarding sanitation. District authorities used to provide sludge collection services, but this responsibility was handed over to the Water Utilities Corporation at the district level and at a much higher rate following the sector reform. District authorities used to charge 30 to 100 pula per operation, but the Corporation charges 600 pula (\$53). The Special Rapporteur was informed that many people could not afford this charge and that many pit latrines were overflowing. In contrast, wastewater tariffs are extremely low, which means that those who are connected to the central system and who tend to be better off economically, are benefiting from a lower tariff for sanitation.

40. In principle, the increasing block tariff encourages water savings and affordability for low-income households. However, such a tariff system carries challenges: the poor are often charged a higher tariff because they have large families and water meters are shared. Compared to other countries, it is also a unique tariff scheme as it sets the same price for domestic, commercial and industrial users.

41. From a human rights perspective, these tariff schemes for water and sanitation services raise a few concerns. Firstly, enterprises who can afford to pay a higher tariff are undercharged by these relatively low tariffs. This means that individual households who are connected to the central system may in fact be subsidizing enterprises, contrary to the trend in most other countries, where industrial and commercial tariffs are higher and subsidize domestic use. In addition, individual households that are not connected to the system, and which are usually worse off, not only lack assistance from the Government to realize their human rights to water and sanitation, but may also be indirectly subsidizing enterprises and better-off households through taxes. Secondly, this situation raises concern that the utilities do not collect enough revenue to invest in operation and maintenance or to extend the connection networks to those who are not served. According to UN-Water, in order to maintain the existing systems, 75 per cent of the water and sanitation budgets worldwide should be devoted to operation and maintenance.[7]

42. The Special Rapporteur urges the Government to revisit the tariff schemes and the new charges on public water points in order to put in place clear mechanisms to ensure affordable water and sanitation for all, including those who cannot pay their bills for reasons beyond their control, such as unemployment. At the same time, the tariff schemes should be set so as to balance the sustainability and the affordability of water and sanitation services. Similar affordability standards for sanitation must be established. In setting such

[7] WHO, "UN-Water global analysis and assessment of sanitation and drinking water (GLAAS) 2012 report: the challenge of extending and sustaining services" (Geneva, 2012), p. 29.

standards, the Government must consider both onsite and networked sanitation and the full costs of sanitation, including wastewater collection, transport and disposal or reuse.

E. Sustainability of water and sanitation services

43. The Water Utilities Corporation is in a deficit situation and relying on the Government to subsidize its operations. The net loss was estimated at 346.6 million pula (S30.2 million) in 2014. According to the Corporation, the higher public sector tariff is at an adequate level for cost recovery. This raises concerns over the future capacity of the Corporation to face the persisting challenges in the water and sanitation sector.

44. Sustainability is an important human rights principle. Water and sanitation services must be available for present and future generations and the provision of services today should not compromise the ability of future generations to realize those rights.[35] Cost recovery is important for a sustainable system, as it ensures coverage of operation and maintenance costs and supports access to water and sanitation by the poor through cross-subsidies. Once services and facilities have been put in place, positive changes must be maintained and retrogression must be prevented. The economic and social dimensions of sustainability must be balanced. On the one hand, sufficient revenues need to be raised to ensure sustainability in service provision. In Botswana, there seems to be room to increase revenues from those who can afford it, such as commercial and industrial users and residential consumers who are financially better off than others. On the other hand, sustainability must be achieved in a way that ensures affordability for all social groups, including those living in poverty.

IV. Right to justice and accountability

45. Article 12 of the Constitution guarantees the right to freedom of expression, which includes the "freedom to receive ideas and information without interference" and "freedom to communicate ideas and information without interference". The right to information includes the right to receive information so as to make informed decisions regarding the human rights to water and sanitation.

46. The Ministry of Minerals, Energy and Water Resources decides on the water rationing schedule and presents the information at a press conference. The Ministry also disseminates such information in print media, the government's five newspaper, radio and its website. While this is an important effort, there is no standard rule on the communication of such information. People expressed their dissatisfaction to the Special Rapporteur at the short notice or unclear information provided regarding water rationing. Some residents said that it was difficult to plan and prepare for the water rationing measures in advance. The Special Rapporteur was informed by communities in rural areas that it was not clear where to report problems with the water supply. People were not informed of the results of sampling of borehole water either.

47. As mentioned previously, there is no independent regulator in Botswana to monitor the performance of the Water Utilities Corporation and local authorities with regard to the provision of water and sanitation. The Ombudsman has the authority to investigate administrative justice issues and make recommendations. However, the Ombudsman does not have the mandate to monitor broader human rights issues, including the human rights to

[35] See A/HRC/24/44 para. 20.

water and sanitation. The Office of the President had initiated a process to amend the Ombudsman Act in order to include the function of a human rights institution.

48. Establishing a mechanism to which people can bring human rights concerns in a free, active and meaningful way is crucial to hold authorities accountable for the human rights to water and sanitation. Botswana should make the human rights to water and sanitation enforceable at the national level. At the international level, the Special Rapporteur calls upon the Government to ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, which will allow people to bring individual cases on the human rights to water and sanitation to the attention of the Committee on Economic, Social and Cultural Rights.

V. Maximum available resources and budgeting for the rights to water and sanitation

49. The human rights to water and sanitation must be realized progressively, using the maximum available resources. This means that Botswana needs to allocate budgets specifically for water, sanitation and hygiene, including menstrual hygiene management.

50. In the 2015 Water, Sanitation and Hygiene (WaSH) Performance Index, Botswana is ranked 104 out of 117 countries in relation to the progressive realization of the human rights to water and sanitation. The index compares the rate of change of specific countries in improving equity and access to water and sanitation to best-in-class rates of change among countries at similar levels of water and sanitation coverage to generate a benchmark value. The ranking suggests that, compared to other countries, Botswana is not investing its maximum available resources to progressively realize the human rights to water and sanitation without discrimination.[7]

51. In his 2015 budget speech, the Minister of Finance and Development Planning[8] stated that, out of the total 12.93 billion pula for the 2015-2016 development budget, the largest share (3.32 billion pula or 25.7 per cent) will be allocated to the Ministry of Minerals, Energy and Water Resources. Development projects include water-related projects such as North-South Water Carrier II (500 million pula) and Maun Water and Sanitation (89 million pula). The Government is reportedly aiming to improve the performance of the energy and water sectors in terms of sustainable development through an increased budget allocation for these sectors. The budget allocation is an essential step for providing access to water and sanitation for all. The increased budget should target not only water resources management and large civil constructions, but also increased access to water and sanitation in underdeveloped areas such as rural areas and new settlements.

52. Often forgotten in the human rights to water and sanitation is the cost of construction and maintenance of onsite sanitation and hygiene, including menstrual hygiene management in schools and other public institutions. In a decentralized structure, it is critical that the budget allocation to local authorities allows them to provide the support necessary to help those who are not served by the Water Utilities Corporation or to those who cannot afford water and sanitation services.

53. The benefits of investing in sanitation far outweighs the costs. For each dollar invested to achieve universal access to basic sanitation at home, an estimated benefit of

[7] See Ryan Cronk and others, "The WaSH Performance Index Report 2015", available at http://waterinstitute.unc.edu/wash-performance-index-report/.

[8] See Botswana, Minister of Finance and Development Planning, "2015 budget speech", available at www.gov.bw/global portal%20exam/2015%20budget%20speech%20by%20honourable%20m.pdf.

three dollars would be enjoyed. The benefits of investing in water, sanitation and hygiene are particularly evident in improved health, prevention of diseases such as diarrhoea and reduction in child mortality. Improved health will increase adults' productivity and children's attendance at school. In addition to monetary benefits, water, sanitation and hygiene have positive impacts on economic, social and sustainable development in the form of dignity gained, progress towards realizing gender equality and the avoidance of environmental degradation.

VI. People of special concern

54. Although Botswana has achieved impressive progress in overall development, the situation regarding access to water and sanitation still varies depending on location and economic and social status. Some segments of the population with whom the Special Rapporteur met during his visit have particular difficulties in accessing water and sanitation.

A. Persons living in rural areas

55. Although Botswana has expanded its piped water networks significantly, in rural areas, the proportion of households with access to improved water sources is still low. The lack of access to water on the premises means that people have to go to collect it from a water standpoint, a borehole, a river or other source. In rural areas without networks, the Special Rapporteur observed that water consumption per person seemed very low at 15 to 20 litres per person per day. This is far below the basic necessary water level in emergency situations, which is 50 litres per person per day. A WHO study revealed that with access to 20 litres of water per person per day, the health concern level is considered high as hygiene practices are difficult to carry out with this amount.[1] The residents of a village that the Special Rapporteur visited were fetching brown water from the river and drinking it directly because they could not afford or did not have access to fuel to boil water.

56. Regarding sanitation, a significant proportion of people in rural areas uses pit latrines. The Water Utilities Corporation charges for emptying pit latrines based on the distance between the town centre and the house. This could be an unfair charge for households living in remote areas. The Special Rapporteur recommends that the Corporation explore a cross-subsidy system for charging for this service and even a fiscal subsidy in view of reducing the price to a reasonable level for all. Some households use non-regulated private companies which provide cheaper services. This also implies affordability concerns, but also raises public health concerns as the wastewater may not be managed properly. In addition, a large proportion of the population still practise open defecation in the bush. The Ministry of Health conducts some awareness-raising activities and raising awareness of health risks among the population is a human right obligation of the State. The Special Rapporteur reminds the Government that it should provide the support necessary for infrastructure alternatives and to change current practices.

57. This disparity between urban and rural areas can be explained partly by the Government's particular development policy for villages and settlements. The revised National Settlement Policy (2004) divides settlements by population size, economic potential and other factors, aimed at guiding national planning and providing a framework to guide the distribution of investment. Remote-area dweller settlements with a population of 250 to 499 are entitled to a set of basic services, including water. If the population is

[1] WHO, *Domestic Water Quantity, Service Level and Health* (Geneva, 2003).

smaller, informal water and sanitation services are provided. According to human rights law, the State has the obligation to ensure access to water and sanitation for everyone, without discrimination, wherever he or she lives. This does not mean that everyone has to receive the same type of services. The Special Rapporteur observed, however, that, in reality, informal services tended not to fulfil the normative content of the human rights to water and sanitation. The Government of Botswana should revisit the remote-area dweller settlement policy from the point of view of ensuring equal access to water and sanitation for everyone regardless of where he or she lives.

B. People in transition from nomadic life and in resettlements

58. The Special Rapporteur observed inadequate water and sanitation situations both in urban and rural poor areas. However, the lack of access to water and sanitation in settlements where traditionally nomadic communities, including San communities, have settled over the past 25 to 30 years, as well as in their resettlements, was a particularly grave concern. The Special Rapporteur met with some San communities, which comprise an estimated 50,000 to 60,000 people. They are a traditional hunter-gatherer people and many of them have shifted from a nomadic to a semi-settled or settled lifestyle. The population of some of their villages was larger than the 250-people requirement to be entitled to basic services, yet there was no water connection. Part of the reason for that situation was the communities' desire to maintain their own education system, traditional lifestyle and land uses; therefore, they chose not to be part of the formal government structure. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people recommended that the Government incorporate respect for and recognition of traditional systems into the land-board system.[3] There does not seem to be great progress in this regard.

59. In the Shakawe community of Okavango sub-district that the Special Rapporteur visited, a pipeline was connected to the public water point, but people did not know why the Water Utilities Corporation sometimes supplied water through the pipeline and sometimes delivered water by truck to tanks in the schoolyard. Some told the Special Rapporteur that the Community Committee had brought the issue to the attention of the local authorities on several occasions since 2009, as well as to members of Parliament. However, they were told that it would soon be sorted out. Since the community was using the water from the tanks located in the schoolyard, only teachers could call the Corporation to deliver water when the tanks were empty. The provision of water was not systematic and public water tanks were sometimes empty for four to five consecutive days. The public water tanks in the community that the Special Rapporteur visited were empty and most of the members of the community had gone looking for water in a village that was 20 kilometres away. The community was tired of the lack of will on the part of the authorities to provide water to the San community without discrimination even though a pipeline was already connected.

60. The Central Kalahari Game Reserve, created in 1961 to preserve wildlife resources, was also ancestral lands to some San communities. In 1985, the Government decided that the communities' new, more settled way of living with water boreholes, for example, was no longer compatible with the objective of the Reserve and it decided to relocate the residents off the Reserve. Most of the residents were relocated between 1997 and 2001 and, in 2002, the Government terminated the provision of services inside the Reserve. A group of residents filed an appeal with the High Court to claim their right to continue to live in the Reserve. In 2006, the Court ruled that the eviction was unlawful, but it did not order the

[3] See A/HRC/15/37/Add.2, para. 88.

Government to provide access to water and sanitation in the Reserve. In 2011, the Court of Appeal held that the applicants did not need the authorization of the Government to use the Mothomelo borehole and that they could open new wells in the vicinity. The Government has allowed the 243 applicants to return to the Reserve — some with one-month entry permits — but it has not provided any assistance regarding access to water and sanitation.

61. Based on information received during interviews with residents of New Xade, a resettlement outside the Reserve, people in Molapo in the Reserve struggled to secure water by traditional methods, such as harvesting water from rain and certain fruits. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people already noted that indigenous people who had remained on or returned to the Reserve faced harsh and dangerous conditions due to a lack of access to water, a situation that could be easily remedied by reactivating the boreholes in the Reserve.[16] Some communities appeared to be caught in the transition from their nomadic way of living to living in a settlement. They could no longer move freely to look for water owing to restrictions inside the Reserve. At the same time, they did not receive adequate water services from the State in their settlements. People also opted to return to the Reserve, even temporarily, because they were bored in the resettlement without any work.

62. The exercise of their cultural or other human rights by these communities must not be the reason why they are excluded from access to water and sanitation services. In the report on her visit to Botswana in 2014, the Special Rapporteur in the field of cultural rights stated that communities were willing to develop economically, but were not always ready to follow the model of the Government, preferring instead to seek alternatives that would enable to them to better reconcile economic development and the preservation of specific ways of life and world visions.[17] This also applied to water and sanitation. Meaningful consultation with communities is key to designing a sustainable solution for the communities concerned; therefore the Special Rapporteur urges the Government to continue and to strengthen its dialogue with the communities and to ensure equal and adequate access to water and sanitation for those in transition from nomadic to settled life and those living in resettlements.

C. Women and girls

63. The 2011 Population and Housing Census revealed that male-headed households had a higher rate of access to piped water indoors (31.2 per cent) than female-headed households (29.1 per cent) and that female-headed households relied more on piped water outdoors and on communal or neighbours' water sources (43.2 per cent) than male-headed households (36.9 per cent). The Census also indicated that a smaller percentage of female-headed households (48.2 per cent) had access to individual sanitation solutions (own flush toilets, own pit latrines, among others) than male-headed households (54.1 per cent). In either case, women and girls tended to be disproportionally affected by the lack of access to water and sanitation and also bore a heavier burden with respect to collecting and treating water and maintaining sanitation facilities. When sanitation facilities were not on the premises, the risks of privacy and security increased for women and girls. During his visit, the Special Rapporteur saw women and children carrying water in various types of containers and in jerrycans. This task obviously hindered women and children from fully exercising their other human rights such as the rights to work and to education.

[16] Ibid., para. 98.
[17] See A/HRC/31/59/Add.1, para. 48.

64. In 2010, the Committee on the Elimination of Discrimination against Women urged the Government to pay special attention to the needs of rural women and women heads of households and ensure that they participated in decision-making processes and had full access to justice, education, health services and credit facilities.[7] Despite overall progress in development, the Special Rapporteur observed the same challenges, such as the lack of women's participation in decision-making relating to water and sanitation and the disproportionate burden on women caused by the lack of access to water and sanitation.

65. Inadequate water, sanitation and hygiene in schools particularly affect girls. Some girls simply did not use the toilet in school because of the poor sanitation facilities and, often, the absence of menstrual hygiene management. The Special Rapporteur was informed that girls did not eat or drink water until they went home so that they would not have to use the toilet in school. One girl who he interviewed said that although there was a disposal service, it was difficult to manage menstrual hygiene without water in school. Menstrual hygiene management that ensures privacy and human dignity is an important, but often forgotten, component of the human rights to water and sanitation.

VII. Conclusions and recommendations

66. **Botswana is known as a success story of stable economic growth and development. It upholds the core human rights principles of equality and non-discrimination in its Constitution, legislation and policies. However, in the shadow of the impressive progress made mainly in urban centres, there exists striking inequalities in access to water and sanitation in rural and remote areas, resettlements and poor urban settlements. People in transition from a nomadic to a settled life and women and girls suffer the lack of access to water and sanitation disproportionately.**

67. **In addition to geographic challenges, Botswana frequently experiences droughts and is expected to be increasingly affected by climate variability. At the time of the Special Rapporteur's visit, the country was experiencing an emergency situation with one of the worst droughts in its history. The Special Rapporteur was concerned that the lack of water resources was directly affecting continuous access to water and sanitation.**

68. **The Special Rapporteur is confident that Botswana, which has achieved rapid progress since its independence in 1966, has the capacity to reach out to all populations, particularly those in rural and remote areas, who have not equally benefited from such development, including in access to water and sanitation. Regardless of the delegation of water and sanitation services to a State-owned entity or local authorities, the primary obligation to realize the human rights for all rests on the national Government.**

69. **At the same time, the Government must continue to invest in sanitation and water services in order to guarantee affordable services for the poor and marginalized groups, whether directly or through local authorities and the Water Utilities Corporation. The good news is that water and sanitation services are known to be financially beneficial investments.**

70. **In order to address an extreme shortage of available water, such as in the case of the drought that prevailed at the time of his visit, the Special Rapporteur recalls that the State obligation to use the maximum available resources includes international cooperation. On the one hand, the Government should identify its needs**

[7] See CEDAW/C/BOT/CO/3, para. 40.

and request assistance, and on the other hand, development partners should continuously offer their support, financially and otherwise, to the people of Botswana.

71. The Government of Botswana should learn from the extreme drought experienced in 2011 and develop a comprehensive strategy for providing uninterrupted access to safe drinking water and sanitation in the foreseen increasing water stress. In order to initiate such a comprehensive strategy, the Special Rapporteur is hopeful that the State will consider the 2012 draft national water policy, which sets forth equality and non-discrimination as principles, and move forward to the implementation stage.

72. In this regard, the Special Rapporteur recommends that the Government of Botswana:

(a) Adopt the draft national water policy in order to approach water and sanitation issues in a comprehensive manner guided by the principles and normative content of the human rights to water and sanitation. Such a policy should include a long-term strategy for sustainable water resources management, taking into account the foreseen increase in water stress;

(b) Immediately adopt measures to improve water treatment, including disinfection of the entire water supply system and revisiting water rationing measures;

(c) Set up a systematic water quality monitoring between the Water Utilities Corporation and the Ministry of Health and increase the frequency of the water quality monitoring programme carried out by the Department of Water Affairs, regardless of the creation of an independent regulatory body;

(d) Adopt special measures to protect the poor and people living in vulnerable situations from the impacts of water rationing both in normal circumstances and during emergency situations;

(e) Review the tariff system, particularly the scheme of applying the same tariff to households and businesses, in order to balance the sustainability and affordability of water and sanitation services particularly for the poor;

(f) Establish a safeguard system to protect access to essential water and sanitation for those living in poverty and those with special needs, including health conditions, through the provision of financial assistance, special tariffs, subsidies or other measures;

(g) Sign and ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, guarantee the human rights to water and sanitation and prioritize water supply for personal and domestic uses in national legislation;

(h) Establish an independent regulatory mechanism with the mandate and adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including good quality water and affordable services;

(i) Revisit the National Settlement Policy in view of providing equal access to water and sanitation for all, regardless of where they live;

(j) Continue and strengthen dialogue with communities who are living a nomadic life or who are in transition from a nomadic to a sedentary life to find sustainable solutions for their access to water and sanitation;

(k) Increase the budget to the maximum available level to progressively realize the human rights to water and sanitation and target underdeveloped areas, such as rural areas and new settlements, to ensure equality;

(l) Establish clear budget lines to provide assistance to the water and sanitation systems that are not connected to the central network, particularly in urban periphery, rural and remote areas;

(m) Explore cross-subsidy and fiscal subsidy systems for emptying pit latrine services to ensure fair charges;

(n) Invest, including human resources, in the maintenance and operation of new and existing services in order to avoid deterioration in the services currently provided and provide financial and technical support to the districts;

(o) Increase the participation of women in decision-making relating to water and sanitation and take special measures to reduce the disproportionate burden on women caused by the lack of access to water and sanitation;

(p) Improve access to water, sanitation and hygiene in schools, in particular install menstrual hygiene management systems in all schools, as well as in health centres;

(q) Strengthen access to information, including by setting a standard rule on the communication of water and sanitation-related measures taken by the Government to enable people to make informed decisions regarding the human rights to water and sanitation.

(r) Strengthen the rights to access to justice and accountability, including by accelerating the efforts of the Office of the President to amend the Ombudsman Act to include the role of a human rights institution.

73. The Special Rapporteur recommends that the international community:

Strengthen support to Botswana during emergencies. For a longer-term strategy, neighbouring countries are encouraged to cooperate and promptly conclude agreements on the use of transboundary water resources.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Tajikistan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Leo Heller.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Tajikistan: comments by the State*

1. **On the recommendation of (a)** on the revision of the Water Code in order to promote the human rights to water and sanitation we note that the objectives of the Water Code of the Republic of Tajikistan are the security of the state of water resources and land of the state water fund for the improvement of social conditions of the population and the environment, protection of waters from pollution, clogging, depletion, prevention and elimination of harmful effects of water, improvement and protection of water sites, strengthening of the rule of law and the protection of rights of physical and legal entities in the field of water management.

2. In accordance with the national legislation, water is an exclusive property of the state and the state guarantees its effective use and protection in the interests of the people.

3. Water objects are provided for use as well as for other needs of the population provided with water facilities, whereas water quality complies with the sanitary requirements.

4. Water objects are provided for use in compliance with the legal requirements and conditions for satisfaction of drinking, household, medical, resort, recreational and other needs of the population, agricultural, industrial, energy, transport, fisheries and other public needs, as well as for use at the same time for several purposes.

5. **With regard to recommendation (L)** it should be noted that in order to ensure transparent financial activities of public associations, fulfillment of our country's obligations under the FATF and OECD and obtained recommendations from the UN Treaty bodies August 8, 2015, the Law of the Republic of Tajikistan "On introduction of amendments and additions to the Law of the Republic of Tajikistan "On public associations" was adopted.

6. The mentioned changes and amendments provides for voluntary contributions and donations, grants, property received by the public association of foreign states and international organizations in the special register of humanitarian assistance of the registering authority. Maintenance of the Register carries out by registration authority on the basis of notifications from public associations. Public association only notices and is not obliged to wait for the inclusion of information in the Register.

7. Amendments to the Act in any case is not aimed at "financial restrictions" and aim to ensure transparency of activities of public associations, as well as the fulfillment of international obligations of the Republic.

8. These amendments in no way limit the rights of public associations for an open discussion of policy and the needs of the population regarding access to water, hygiene and sanitation.

9. Moreover, public associations as part of its statutory activity and legislation have the right to discuss and participate directly in the implementation of measures aimed at providing the population with water, hygiene and sanitation through the implementation of projects and programs with the involvement of "foreign financing" and cooperate in this direction with the state authorities.

10. Based on this, the changes and amendments to the Law "On public associations" envisage only notification of the authorized body in regard to involvement of "foreign funding" and in no case weaken civil society organizations, as it is stated in the

* Reproduced as received.

recommendations of the special rapporteur of the UN. These changes and amendments do not limit the activities, the amount of attracting of "foreign funding" as well as the scope of the rights and obligations of public associations provided in the bylaws, legislation and the international acts recognized by Tajikistan.

11. In view of the above, do not support the recommendation of the UN special rapporteur for the revision of the changes to the Law "On public associations".

12. **In regard to recommendation (o)** we note that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights provides only for recognition of the competence of the UN Committee on Economic, Social and Cultural Rights to deal with individual complaints.

13. It should be noted that in the first and second cycle of the UPR, as well as in the presentation of the National Report on the implementation of the International Covenant on Economic, Social and Cultural Rights a number of recommendations concerning the accession to the above Optional Protocol have been presented to Republic of Tajikistan.

14. Currently, the question of accession to the above Optional Protocol is considered as part of national plans for the implementation of international obligations in the field of human rights.